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ABSTRACT

This study examines the effectiveness of specific attempts to remedy employment discrimination against minorities through litigation and contract compliance efforts. Further, its objective is to identify factors underlying the effectiveness or lack of effectiveness of court decisions and out-of-court settlements in producing changes in minority employment patterns. Special attention is given to the construction and shipbuilding industries and to the issues of hiring, union entry, upgrading, and seniority systems. To advance an understanding of the dynamics of combatting employment discrimination, the authors present a new conceptual framework for interpreting activity in this field. The authors suggest that conclusions and recommendations drawn could be of interest to attorneys, judges, minority organizations, and government agencies attempting to remedy employment discrimination. (Author)

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CSHR Report 76-1

The Impact of Legal and Administrative Remedies to Overcome Discrimination in Employment

Ray Marshall, Charles Knapp,
Malcolm Liggett and Robert Glover*

Final Report

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December 1976

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To advance an understanding of the dynamics of combatting employment discrimination, the authors present a new conceptual framework for interpreting activity in this field. Conclusions and recommendations are drawn which will be of interest to attorneys, judges, minority organizations, and government agencies attempting to remedy employment discrimination.

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Ray Marshall
Charles Knapp
Malcolm Liggett
Robert Glover

Austin, Texas
January 1977

Chapter 1:

INTRODUCTION

The primary objective of this study is to investigate the effectiveness of various remedies for discrimination against minorities in employment. Case studies of selected judicial and compliance activities promoting equal employment opportunity (EEO) are presented and analyzed.

This report first addresses judicial remedies, pursuant to federal legislation including Title VII of the Civil Rights Act (1964). Important cases and out-of-court settlements from various industries covering key employment discrimination issues are analyzed. Chapter 2 focuses on the construction industry where the predominant issues have been hiring and union entry and job referral procedures.

Chapter 3 examines the efforts of one compliance agency, the Office of Civil Rights, Maritime Administration, in its efforts with five shipbuilding firms. In shipbuilding and ship repair, the chief issues have been entry to craft and supervisory jobs as well as upgrading and seniority systems. Chapter 4 presents a summary and conclusions.

Employment Discrimination: Overt vs. Institutionalized

Before proceeding further, it is useful to define employment discrimination and describe the economic and social mechanisms through which it is perpetuated. To better understand these mechanisms, it is useful to distinguish between overt and institutionalized forms of employment discrimination.

Discrimination may be overt in the sense the individuals are consciously accorded different treatments in specific cases because of attributes not associated with productivity. Institutional discrimination occurs when people are accorded different treatment because of attributes not associated with productivity resulting from the influence of social patterns of behavior to which people have adapted. In the overt case, for example, applicants for employment might be denied jobs because of their race, national origin, sex, etc., whereas in the institutional case applicants might not apply for jobs because of inadequate knowledge of them, a feeling that they would be discriminated against if they did apply because of the observed behavior by those controlling the jobs, or because segregated educational or training facilities had rendered them unqualified for the position even if overt discrimination were no longer practiced. Overt discrimination is clearly more easily identified and dealt with. However, in practice, these forms of discrimination might not always be distinct because there might be some overlap, as when discriminators use their knowledge of institutionalized behavior patterns to practice overt discrimination.

Discrimination might also take many forms. In this study, we are concerned mainly with employment discrimination against racial or ethnic minorities; although the policies concerned also are applicable to women and other groups, the same analytical consideration will not necessarily apply to these groups. Before looking at our specific case studies, we will outline the development of legal remedies with respect to discrimination.

Legal and Administrative Remedies

Since World War II, enforceable laws against discrimination have been passed in over half of the states and many municipalities. These laws cover virtually the entire black population outside the South, where only Kentucky had adopted such a statute by 1975. Generally, these laws are administered by part-time commissioners who ordinarily have powers to (a) receive, investigate, and pass on complaints; (b) use conferences, conciliation, and persuasion in an effort to resolve complaints; (c) conduct public hearings, subpoena witnesses, and compel their attendance under oath as well as requiring the production of records relating to matters before the hearings; (d) seek court orders enforcing subpoenas or requesting cease and desist orders; and (e) undertake and publish studies of discrimination.

Before the Civil Rights Act of 1964, blacks also used the courts to combat discrimination in employment. Most court cases dealt with unions because, in the absence of statutes or nondiscrimination clauses in collective bargaining or government contracts, employers had no legal obligation not to discriminate. Unions acquired legal rights and duties as a result of the National Labor Relations and Railway Labor Acts. Specifically, in the 1944 Steele decision [323 U.S. 192 (1944)] the Supreme Court ruled that the Constitution imposed upon unions that acquired the privilege of exclusive bargaining rights the duty to represent all members of the bargaining unit fairly. Aggrieved minorities have, therefore, brought legal action for injunctions and damages against discriminating unions. Moreover, in the 1964 Hughes Tool case [147 NLRB 1573 (1964)], the National Labor Relations Board (NLRB) held violation of the duty of fair representation to be an unfair labor practice, giving aggrieved minorities a measure of administrative relief by permitting them to file charges with the NLRB instead of with the courts.

The major antidiscrimination measures applicable to employers before the 1964 Civil Rights Act were the nondiscrimination clauses required in contracts with the Federal government. These nondiscrimination provisions were required by executive orders issued by various presidents beginning with President Roosevelt during World War II.

The Civil Rights Act and the EEOC

But the main statute against discrimination in the United States is the Civil Rights Act of 1964. Title VII of that act outlawed discrimination on the basis of race, color, religion, sex, or national origin in hiring, compensation, and promotion. The law applies to private employers, state and local governments, government organizations, educational institutions, employment agencies, and labor organizations employing or serving 15 or more persons.

The Equal Employment Opportunity Commission (EEOC) was created to enforce Title VII. Under the 1964 Act, the Commission's role was limited to investigating charges, issuing cause or no cause findings, attempting conciliation between charging parties and respondents and, failing that, "filing friend of the Court" briefs for those charging parties who exercised their right under the Act to seek redress in the federal court. Title VII authorized the Attorney General to bring suit against respondents under a special section of the Act. The EEOC established a reporting system pursuant to the Act and provided technical assistance for voluntary compliance to employers and unions.

Amendments in 1972 extended the Act's coverage into the public sector and empowered the EEOC to bring civil actions in federal court seeking remedies on behalf of charging parties. The 1972 amendments also shifted litigation functions (some with a two-year delay) from the Justice Department to the EEOC.

The number of charges of discrimination filed with the EEOC nearly tripled between 1970 and 1973, when it reached over 47,000. Approximately 60 percent alleged racial discrimination. Over 85 percent of the complaints were against employers, and the rest against unions, employment agencies, and other parties. Complaints of racial discrimination usually involved a refusal to hire, a discharge, or an inferior job classification. Charges of exclusion from unions were relatively rare, accounting for only 4 percent of the racial discrimination charges against unions; complaints about discrimination in referrals were more common.

Despite its caseload, the EEOC did not have a major impact on employment practices during its first six years. Before the 1972 amendments, the Commission relied primarily on conciliation and voluntary agreements to comply with Title VII; formal decisions were less frequent. The procedures were time-consuming, uncertain, and the results were meager. In fiscal 1972, the Commission completed action on over 2,800 cases without a formal decision, and written agreements were achieved in only 412 cases; of the 970 cases closed after a decision, 314 resulted in agreements.

Conciliation agreements had no legal force and thus often caused limited employment changes. For example, a study comparing firms charged with discrimination by the EEOC with others not charged found that only one in four of those charged had better minority employment records than their counterpart firms. And the overall effects of the EEOC were usually not discernible. In Memphis, Tennessee, where 16 successful conciliations were negotiated in 1967 and 1968, minority employment among employers subject to the law increased only from 29.1 to 29.7 percent for men between 1966 and 1969. In Atlanta, Georgia, where eight conciliations were successful during 1967 and 1968, minority employment among males dropped from 16.5 and 16.0 percent.[1] Of course, employment patterns are influenced by labor market considerations which often were much stronger than the limited effects of the EEOC.

It is, however, important to distinguish the direct and indirect effect of Title VII and other antidiscrimination activities. Perhaps the greatest impact of law is not the direct enforcement activities but the tendency they create among some employers to comply with the law. This effect probably is greatest where employers already have strong economic motives to hire those discriminated against, but are deterred form making the changes due to fear of adverse reaction from customers or existing employees. In these cases, the law provides an excuse for taking the desired actions.

Although basic Title VII compliance procedures remained unchanged between 1964 and March 1972, when the expanded powers became law, court decisions strengthened the EEOC's power. During the early years after the Civil Rights Act was passed the courts were preoccupied with procedural matters (time limits for filing charges, right of the EEOC to intervene, and class action suits), but turned to more substantive issues during the late 1960s and early 1970s. In 1971, the Supreme Court ruled unanimously (Griggs v. Duke Power Co.) that Title VII "proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation." Preemployment tests that were not proven to be job-related were outlawed as arbitrary and discriminatory where the tests excluded blacks and other minorities. The precedent was expanded to other job requirements that were not business necessities. The Griggs case also was important because the Supreme Court dealt with the question of the effects rather than the invidious intent of discriminatory practices. (Supreme Court 1977 rulings in cases regarding discrimination in housing and in education have seemed to return to a focus on intent rather than effects.)

The Court also ruled (Gregory v. Litton Systems, Inc.) that a company's refusal to employ people with a number of arrests, but not convictions, was discriminatory because blacks are statistically more likely to be arrested than whites. Perhaps most significantly, a landmark case in 1971 (Robinson v. Lorilland Co.) established the principle of monetary relief in class action cases, and raised the prospect of substantial settlement costs.[2]

The Commission's new potential for filing class actions with large settlements caused considerable concern among employers. Many who feared conciliation activities might be abandoned in favor of litigation became much more amenable to conciliation. In 1973, the American Telephone and Telegraph Company signed a consent decree providing $15 million in restitution and backpay for several classes of female employees, and a $23 million promotion package for women and minorities.[3] This agreement was part of a campaign to improve employment opportunities for women and minorities and was based on a novel approach whereby the company's right to a rate increase by the Federal Power Commission was challenged because of noncompliance with Title VII. In addition, the EEOC's legal staff was increased more than fivefold in the first six months of 1973. In order to have the maximum effect, priority was assigned to cases involving major companies and unions with large numbers of outstanding charges against them.

Government Contract Provisions and the OFCC

Another way to promote equal employment opportunity is to use antidiscrimination clauses in government contracts. The Office of Federal Contract Compliance (OFCC) in the Department of Labor is responsible for administering this program. The OFCC was created in 1965 by Executive Order 11246, which prohibited discrimination by government contractors on the basis of race, creed, color, or national origin. In 1967, sex was added to this list by Executive Order 11375. In February 1970, OFCC issued orders requiring contractors to examine their utilization of minority workers, to establish "affirmative action" goals and timetables for hiring designated proportions of minorities and to collect data to demonstrate their progress.

In December 1971 this order was amended to include sex discrimination. These enforcement powers apply to companies employing an estimated one-third of the labor force.

The OFCC's enforcement powers include the ability to cancel, terminate, or suspend current contracts and to debar offenders from future participation in government contracts. But the OFCC has not fully utilized these powers; it has limited its enforcement activities to requiring affirmative action plans by contractors and unions. By April 1975 in only eleven cases had contractors been debarred.[4]

A number of factors have limited the OFCC's ability to change racial employment patterns. The most important of these are associated with collective bargaining procedures and labor market institutions. The OFCC is particularly limited by its inability to bring action directly against labor organizations, because the latter are not parties to federal contracts. Moreover, many employment practices have been structured by collective bargaining contracts. Changing racial patterns might, therefore, require alterations in contractual relationships which protect white workers as well as black. White workers are, therefore, likely to resist these changes. For example, in 1967 at the Sparrows Point, Maryland plant of Bethlehem Steel Company the OFCC found that eighty percent of black employees were working in 14 of the plant's dirtiest and hottest departments, with limited advancement opportunities. To transfer to a department with better job progression, blacks were required to start at the bottom, frequently losing seniority and taking wage reductions.

Following its finding of discriminatory practices in 1967 at Bethlehem, the Department of Labor initiated a hearing process with a three-member panel. Work began in 1968, but a final report was delayed until December 1970. The panel found the company was guilty of discriminatory practices, but voted two to one to forego any remedy because on business necessity grounds it would have been "too disruptive".

Subsequently, the Secretary of Labor took charge and solicited more information from interested parties, and the Department issued an order on January 15, 1973. There was however, further delay in that the order was not implemented until October 15, 1973. The order posting the remedy allowed black steelworkers in 14 departments to transfer with rate retention and carry forward seniority. The remedy allowed two bidding systems, one of which called for plantwide seniority if a member of the affected class was involved in the bidding process. This rule was applied in promotions, layoff, and recall. Unfortunately, shortly before the ruling took effect, the company announced a layoff; and new layoff rules, which applied where members of the affected class were involved, produced bitterness among both white and black workers. The excessive delay and the problems that surfaced in the implementatio process provided some useful lessons for practitioners in this fiel

The experience of the Bethlehem plants at Lackawanna and at Sparrow's Point led Judge Pointer to avoid any use of dual bidding procedures in the remedy provided in the Fairfield Case.[5] This kind of remedy was approved by the same court in the Consent Decree that covered nine steel companies in the international union

Change also is limited because blacks often do not respond to changes as much as their initiators expect. For example, as a result of a 1971 Justice Department suit, 1,600 black employees in Bethlehem's Lackawanna plant were granted transfer rights. Given four months to sign up, only 430 did so and only 70 actually changed jobs. Some were unqualified for the new positions; some senior black workers saw no advantage in moving as they approached retirement; others preferred to stay where they were. Clearly, well entrenched institutional discrimination cannot be easily erased by judicial decree.

The seniority issue illustrates the problems involved in changing institutionalized patterns in industrial situations, but other problems exist in the construction industry, where seniority is relatively less important. In the building trades blacks have been underrepresented in those crafts paying the highest wages.

To change this situation, the Labor Department initiated a number of plans which established goals and timetables designed to bring the black employment share of skilled workers up to their proportion in the metropolitan population. Despite goals and timetables, however, none of these plans were very successful in achieving its objectives.

Major reasons for failure were rising unemployment as the recession hit construction harder than other sectors and no effective machinery to translate goals and timetables into more positions in the construction labor market. The plans established goals and timetables for particular federal construction projects, which was not the same as attaching workers to a labor market.

In 1974, in an action some observers feel, along with the AT&T settlement mentioned earlier, might greatly improve employment opportunities for women and minorities, nine major companies and the United Steelworkers of America entered into a consent decree to end a lawsuit filed by the Justice Department on behalf of Peter J. Brennan, Secretary of Labor, and the Equal Employment Opportunity Commission. In the settlement, the Union and the companies agreed to pay 40,000 minority and women workers $30.9 million in backpay and to set up goals and timetables to increase the number of such workers in areas where they had been underrepresented. Meeting these goals is estimated to cost the companies millions of dollars in higher wages for women and minority workers, who were given preference in moving into previously "white male" jobs until the goals were reached. A tripartite (union-industry-government) "audit and review" committee was established to monitor compliance with the program for five years. At each plant, company-union-minority "implementation committees" were established to insure compliance with goals and timetables.

The union and the companies entered into the consent decree in order to avoid what they considered to be the danger that the industrywide lawsuit would lead to widespread disruption of seniority rules, the substitution of unworkable regulations written by judges, the threatened bankruptcy of many locals, and a possible severe crippling of the international union. The negotiated settlement minimized these dangers. (The only major company refusing to accept the consent decree was Inland Steel which objected to the implication that it had practiced discrimination in employment.)

The Apprenticeship Problem

Civil rights leaders have concentrated on apprenticeship because this system leads to good jobs in the skilled trades and because there have been very few blacks in them, in part because institutional discrimination caused few black youngsters to attempt to enter apprenticeship programs before the 1960s. The craft unions' recruitment patterns excluded most black youths from any opportunity to enter the system. Blacks also were disadvantaged in meeting the qualifications for entry into apprenticeship programs. Many programs require high school, and not only does the education level of nonwhites still lag behind that of whites, but many blacks have been handicapped by what Kenneth Clark calls "the massive inefficiency of the public schools where the masses of Negroes go."[6]

In 1963, Secretary of Labor Willard Wirtz approved new federal apprenticeship standards designed to "provide full and fair opportunity for application." These regulations had limited impact for a variety of reasons, but basically because few blacks applied for or could meet the qualifications and testing procedures.

The Bureau of Apprenticeship and Training (BAT), which administers the program, also has limited enforcement powers. Deregistration, BAT's main weapon, is more of an inconvenience than a serious deterrent to discrimination.[7]

Legal sanctions were not especially successful, although they have perhaps had the effect of creating among apprenticeship sponsors a climate conducive to change; apprentice standards and programs have become more formalized; some apprentice sponsors have raised their qualifications. The possibility of sanctions also seems to have strengthened "voluntary" compliance programs. Although sanctions have been used very rarely (because relatively few formal written complaints have been lodged against discrimination in apprenticeship training and because discrimination is difficult to prove), antidiscrimination agencies have succeeded in making investigations that have clarified the extent of black participation in apprenticeship programs and have focused attention on some of the problems involved in increasing the number of black apprentices.

The limitations of legal sanctions led to the creation of apprenticeship information centers (to give information about apprenticeship programs) and outreach programs to recruit, tutor, and place apprentices. These programs have been fairly successful in increasing the number and proportion of minority apprentices. These programs have been operated primarily by the RTP (Recruitment and Training Program, formerly the Workers Defense League), the National Urban League, Building Trades Councils of the AFL-CIO Human Resources Development Institute, and other local organizations in some places. Largely as a result of these outreach programs, the proportion of all apprentices who are members of minority groups has increased steadily since 1960, when minorities accounted for only 2.5 percent of all apprentices;[8] they accounted for 4.4 percent in 1966, 8 percent in 1969 and over 14 percent in 1973. Minorities accounted for only 6 percent of all new apprentices in 1967, but 17 percent of new apprentices in 1973-1974. In July 1974, when Secretary of Labor Peter Brennan reactivated the Federal Committee on Apprencticeship (which had not met for five years) he announced that outreach programs had recruited and registered 30,000 apprentices since 1968.

Although apprenticeship outreach programs have been more successful than any other approach to this problem, it remains to be seen if they can cause the kinds of changes throughout the country that will replace institutionalized discrimination with institutionalized equal opportunity. So far, however, they have demonstrated the importance of a comprehensive approach to recruiting and preparing black youngsters for apprenticeship programs. Moreover, this approach has demonstrated its effectiveness in getting blacks into other jobs more effectively and at lower costs.

Quotas and Preferential Treatment

Various programs to increase black employment opportunities in the construction and other industries have raised the highly controversial legal and moral issue of quotas and preferential treatment. Policies proposed by some civil rights leaders and government agencies are based upon the belief that progress in eliminating patterns of inequality requires compensation for past discrimination. However, unions and employers have resisted these efforts on the grounds that they discriminate against white workers and cause inefficiency.

Court challenge of the Philadelphia Plan, which required goals and timetables in the construction industry, was initiated by the Contractors Association of Eastern Pennsylvania, who charged that the plan violated the Constitution and laws of both the United States and Pennsylvania. However, in 1970, a federal district court in Pennsylvania upheld the plan as valid under Title VII and the Constitution. The court pointed out that the concept of "affirmative action" had been upheld as a valid exercise of presidential powers in a number of cases and added:

> The heartbeat of "affirmative action" is the policy of developing programs which shall provide in detail for specific steps to guarantee equal employment opportunity. The Philadelphia Plan is no more or less than a means for implementation of the affirmative action obligations of Executive Order 11246 (Contractors Association of Eastern Pennsylvania v. Shultz, D.C.E., 1970).

Moreover, according to the court,

> The plan does not require the contractor to hire a definite percentage of a minority group. To the contrary, it merely requires that he make every good faith effort to meet his commitment to attain certain goals. If a contractor is unable to meet the goal, but has exhibited good faith, then the imposition of sanctions, in our opinion, would be subject to judicial review (Contractors Association of Eastern Pennsylvania v. Shultz, D.C.E., 1970).

Thus the court argued, in effect, that the establishment of goals is legal but than an attempt to force an employer to meet those goals might be illegal. Because such argument turns on the definition of "good faith" and the procedures to determine qualifications and standards, the issues involved in the Philadelphia Plan obviously have not been settled. In October 1971 the Supreme Court refused to review this case, letting the lower court ruling stand. While pushing the variations of the Philadelphia Plan, the Department of Labor also accepted voluntary or "hometown plans."

However, in July 1974, after dissatisfaction with the results of so-called "hometown" plans for voluntary efforts to change racial employment patterns in the construction industry, the Department of Labor imposed mandatory hiring goals on 101 local building trades unions involved in 21 hometown plans. These goals were imposed after the OFCC determined that the participants in these places were not making good faith effort to meet voluntary standards for increasing minority participation. The OFCC did not release statistics showing the extent to which the hometown plans had failed, but a 1973 survey of 31 of 70 government-approved plans showed that less than a third of the local unions had met their goals.

At about the time the OFCC imposed the mandatory goals the EEOC released figures showing that minority membership in building trades unions reporting to that agency increased by 2.4 percent between 1969 and 1972. Minority membership was much greater relatively in the laborers, painters, roofers, and trowel and miscellaneous trades than it was in the more highly skilled mechanical crafts, as indicated by the following EEOC statistics for 1972:

Minority Membership in Building Trades, 1972

	Total Union Membership	Minority Percent
Mechanical Trades	600,049	6.9
Boilermakers	32,804	11.4
Electrical Workers	237,719	7.5
Elevator Constructors	9,066	5.5
Iron Workers	84,931	9.3
Plumbers, Pipefitters	189,814	4.2
Sheetmetal Workers	45,715	6.9
Trowel & Miscellaneous Trades	626,609	10.7
Asbestos Workers	9,569	3.7
Bricklayers	32,646	13.1
Carpenters	366,215	11.4
Lathers	2,978	14.2
Marble Polishers	3,125	15.2
Operating Engineers	183,207	6.2
Plasterers and Masons	28,869	32.5
Laborers, Painters, & Roofers	377,793	37.5
Laborers	295,563	43.4
Painters	67,446	14.8
Roofers	14,784	23.4
TOTAL BUILDING TRADES	1,604,451	15.6

Source: U.S. Equal Employment Opportunity Commission news release, dated June 30, 1974. Minority refers to blacks, Spanish surnamed Americans, Asian Americans, and American Indians.

These patterns are not unlike those of other industries where minorities are heavily concentrated among the lower-paying occupations. If anything, few other industries afford minorities relatively as many high-paying opportunities as the building trades.

The debate over the Philadelphia Plan did not resolve the issues, in part because the protagonists addressed themselves to different questions. The defenders of the programs argued for the legality of the Executive Order and affirmative action, not whether "quotas" or "goals" could legally be imposed; opponents of the plan argued that it required quotas -- which was not the case, at least in the sense that employers would lose contracts for failing to hire a fixed number of black craftworkers.

Although the "qualifications" question is a key factor in minority participation in building trades, inadequate attention was given to it during conflict with the construction industry over black employment. This question is important because, in th absence of some agreement over the definition of qualifications for a particular craft, it is difficult to see how black workers in those crafts are to be identified and put to work. Although the technical difficulties involved probably account for the inadequate attention to this question, other factors undoubtedly ar at work. For one thing, a prevailing assumption seems to be that there are many fully qualified black construction workers, who ar ready to be put to work, who are unemployed or underemployed because of discrimination. To some extent, this idea rests on the belief that the construction industry has exaggerated its qualifications for discriminatory reasons. There also seems to be a middle-class bias that qualifications and standards really are not too important for manual crafts -- an assumption that all manual jobs are of low status and therefore do not really require mathematics or a four-year apprenticeship.

Of course, what many people fear is that quotas and preferential treatment will cause blacks with less than the minimum required qualifications to be hired ahead of more qualified whites, in order to compensate blacks for past discrimination. Regardless of its short-run consequences, this kind of "preferential treatment" has serious long-run implications. No better statement of this point can be made than the following comment by the noted psychologist Kenneth Clark:

> I cannot express vehemently enough my abhorrence of sentimentalistic, seemingly compassionate programs of employment of Negroes which employ them on Jim Crow double standards or special standards for the Negro which are lower than those for whites.
>
> This is a perpetuation of racism -- it is interpreted by the Negro as condescension, and it will be exploited by them. Those who have been neglected and deprived must understand that they are being taken seriously as human beings. They must not be regarded as peculiar human beings who cannot meet the demands more privileged human beings meet.... I suspect that the significant breakdown in the efficiency of American public education came not primarily from flagrant racial bigotry and the deliberate desire to create casualties but from the good intentions, namely, the sloppy sentimentalistic good intentions of educators to reduce standards of low-income and minority group youngsters.[9]

Segregated Seniority Rosters

Efforts to desegregate or integrate seniority rosters have involved many issues similar to those raised in the construction industry, as well as some that are unique. Indeed, in many ways the seniority question is more complex than the issues raised by minority participation in the construction industry. This is an important area because of the prevalence of job segregation, especially in the South where institutionalized discrimination confined blacks to agriculture and the most menial or undesirable nonagricultural jobs, and because desegregation is essential to significant improvements in black employment patterns. The main issues raised by this question relate to whether blacks are to be compensated for past discrimination when seniority rosters are merged; whether company or plant seniority will be used for blacks alone or for blacks and whites; whether such impediments as wage reductions, time limitations, and loss of pay will be permitted to deter integration; and whether blacks will be required to pass special tests which whites already in the line did not have to pass.

Considerable attention was devoted to the segregated seniority issue by various government contracting committees during and after World War II. However, the impact of the contracting committees was limited by their inherent weaknesses and the fact that they concentrated on industries, like petroleum refining, where blue-collar employment was declining.

By the time of the Civil Rights Act, only token integration of blacks had taken place in major southern manufacturing plants. In addition to the factors mentioned above, seniority integration was impeded by the fact that many blacks hired as laborers lacked the education and experience to move up. Conversely, many senior blacks would have been forced to accept lower wages and lose job seniority in order to enter the bottom jobs in previously all-white lines of progression. Because seniority is a jealously guarded right and influences the profitability of industrial plants, it is not surprising that the terms under which seniority rosters are desegregated should be such a controversial and complex issue.

An important pre-Civil Rights Act decision came in the 1959 Whitfield case, where the Fifth Circuit Court of Appeals ruled that it was legal for unions to permit blacks to transfer to the bottom of the formerly all-white lines of progression (Whitfield v. United Steelworkers). However, the Whitfield decision has not been followed in a series of post-Civil Rights Act cases.

In the 1968 Quarles case, departmental seniority at the Phillip Morris plant in Richmond was held not to have been illegal per se. However, a system based on previous discriminatory practices was not legal if "employers maintain differences in employee operations which were the result of discrimination before the Act went into effect" (Quarles v. Phillip Morris). In this case, "the restrictive departmental transfer and seniority provisions ... are intentional, unlawful employment practices because they are imposed on a departmental structure that was organized on a racially segregated basis." The Court also concluded that Title VII of the Civil Rights Act "does not require that Negroes be preferred over white employees who possess employment seniority. It is also apparent that the Congress did not intend to freeze an entire generation of Negro employees into discriminatory patterns that existed before the Act." The court required the company to permit permanent black employees who had been discriminated against to transfer into formerly all-white departments on the basis of company seniority. However, the Quarles decision, which has been relied on in other cases (Irvin v. Mohawk Rubber Co., 1970), reduced the seniority rights of temporary black employees and did not disturb the departmental seniority system.10

Partly because the Supreme Court refused to review it, the Crown Zellerbach case has been regarded as a landmark decision by many civil rights leaders (U.S. v. United Paper Makers, 1969, cf. Hicks v. Crown Zellerbach, Corp., 1968). In this case, brought by the Justice Department under Title VII and Executive Order 11246, a U.S. District Court ruled that a departmental seniority arrangement at the company's plant in Bogalusa, Louisiana, violated the Civil Rights Act. As in Quarles, the court held that blacks who had been discriminated against could be promoted to jobs they were qualified to perform on the basis of company and not departmental seniority. Moreover, the court held that "institutional systems or procedures which deny to Negroes advancement to jobs held by whites with comparable mill seniority and ability consistent with [the] employer's interest in maintaining [the] skill and efficiency of [his] labor force ... must be removed." These institutional arrangements included prohibitions on promotions of more than one job slot at a time where intermediate jobs did not afford training necessary for the next higher jobs or where employees had acquired the necessary training through temporary assignments; requiring black employees to enter the previously all-white lines of progressions at below those steps necessary to provide training for the next higher jobs; limiting time intervals for promotion to periods longer than necessary to learn the job before promotion; and "deterring Negro employees from transferring to formerly all-white lines of progression by requiring these employees to suffer a reduction in wages and a loss of promotional security as a condition of transfer."

Federal courts have ruled a number of times on the applicability of collective bargaining provisions to civil rights remedies in the 1974 Alexander case (Alexander v. Gardner-Denver Co. 415 U.S. 36 [1974]). The Supreme Court ruled that employees did not foreclose their Title VII rights to trial de novo by prior submission of issues to final arbitration; the court ruled:

> ...the federal policy favoring arbitration of labor disputes and the federal policy against discriminatory employment practices can best be accommodated by permitting an employee to pursue fully both his remedy under the grievance-arbitration clause of a collective bargaining agreement and his case of action under Title VII. The federal court should consider the employee's claim de novo.

One of the most important recent issues involved in the conflict between collective bargaining agreements and affirmative action plans was the 1975 Jersey Central Power and Light v. IBEW Local Union (No. 74-2016, F.2d 1975) and Watkins v. United Steelworkers Local 2369 (No. 72-2604, F.2d, July 16, 1975) cases in which the Circuit Courts of Appeals reversed a lower court rulings that conciliation agreement should be enforced in such a way that layoffs would result in the retention of minority workers in the proportion they were represented in the pre-layoff peak. The appeals court ruled that the collective bargaining agreement gave senior workers priority in layoffs over junior women and minorities. In the Watkins case, the court ruled that seniority agreements resulting in the discharge of more blacks than whites did not violate Title VII. If upheld by the Supreme Court, these rulings will limit the ability of both the OFCC and the EEOC to require the retention of women and minorities during layoffs.

Conclusions

Although the courts' rulings on the question of the remedies for discrimination in seniority systems might appear confusing, and many of the issues remain to be resolved by the Supreme Court, some consistent threads seem to be emerging. With respect to imposition of "affirmative action" programs to correct pre-Civil Rights Act discrimination, the courts seem clearly to have held that no penalties can be imposed for pre-act discrimination, but that procedures adopted before the Act cannot be continued where the procedure was clearly adopted for discriminatory purposes and perpetuates discrimination, as was the case in Quarles and Crown Zellerbach. However, both of these cases, and Griggs (U.S. v. Duke Power Company, 1971) the courts recognized that there might be legitimate business reasons for retaining the seniority system (i.e., job security).

The forms of employment discrimination most resistant to legal pressures are of the institutionalized variety. The key issues addressed in this report are predominantly institutional. Previous studies as well as the cases presented in this report demonstrate that overt issues (e.g., the use of separate dressing facilities) yield more readily to the force of law. The main reasons for this are fairly obvious in a legal system based on due process. The state ordinarily prosecutes those who break laws and in a system characterized by due process the burden of proof is on the state. Therefore, if there is a law or contractual obligation not to discriminate, people who violate the laws or their contractual obligations must pay the penalty prescribed by law, but the government must prove that the accused has in fact violated the law. Overt acts are more obvious and therefore more conducive to proof. Institutionalized patterns of behavior, on the other hand, are not necessarily in violation of the law and therefore less likely to yield to the case-by-case approaches characteristic of the American legal system. Since institutional forms of discrimination have been so pervasive, the legal system would be even more overloaded than it is if all cases of institutional discrimination were prosecuted. Moreover, as this study will demonstrate, serious constitutional and legal issues are raised by attempts to use our legal system, designed primarily to prevent overt acts, to change institutionalized patterns of behavior with respect to discrimination.

Let us briefly review research conducted thus far regarding efficacy of legal antidiscrimination activities, including contract compliance among government contractors.

Considerable attention has been devoted to measuring the effect of public antidiscrimination activities on minority employment, but less to assessing the impact of these activities on the employment of women. Much of the early work focused on the efficacy of state and local antidiscrimination legislation. The findings indicated that, notwithstanding the dedication of many staff and commission members, the performance of most state and local FEP commissions have not been impressive. From a survey of this research in 1970, Dale Hiestand concluded that the efforts generally have not been very successful.[12] With few exceptions,[13] research indicates that relative to whites minority employment gains in states and cities with FEP laws have generally been small.[14]

The weakness of many state and local FEP laws and their enforcement is frequently cited as a reason for this finding. Several studies conclude that where FEP legislation has been enforced vigorously and consistently its effect has been beneficial.[15] However, these results should be interpreted with caution since active enforcement of FEP legislation may coincide with a more favorable climate toward minorities. Thus the observed improvement in minority employment positions may be attributable to the other factors rather than enforcement of FEP legislation.

The performance of federal antidiscrimination efforts also has been less than impressive. As noted earlier in this report, prior to amendment of the law providing the U.S. Equal Employment Opportunity Commission with enforcement powers the EEOC was generally unsuccessful in securing voluntary compliance with Title VII through conciliation and persuasion.[16] Only one out of three respondents charged with employment discrimination prior to 1972 -- where reasonable cause existed to believe the charge to be true -- agreed voluntarily to change their alleged discriminatory employment practices.[17] Among respondents agreeing to this change, minority employment gains were generally small.[18] Similar findings are reported in studies of the textile[19] and construction[20] industries.

Antidiscrimination legislation not only may affect the employment practices of firms charged with unlawful employment discrimination, but organizations not charged who wish to avoid prosecution or who are otherwise motivated to comply with the law. Consequently, several studies have examined the combined influence of these effects of changes in the labor market for minority groups, specifically, black Americans.[21] Richard B. Freeman concludes that much of the improvement in the black economic position that took place in the late sixties appears to be the result of governmental and related antidiscriminatory activity associated with Title VII.[22] Again, however, as in the earlier case of state and local FEP legislation, the author is unable to separate the influences of the law from that of the coincident period of sustained economic activity and intense civil rights demonstrations. Indeed, a careful examination of the evidence casts considerable doubt on Freeman's conclusion.[23] The changes in black employment during the last half of the 1960s can more logically be attributed to economic and labor market conditions than to enforcement activities of the EEOC. In the first place, the EEOC did not have strong enforcement powers throughout this period. Moreover, the Commission had very limited resources and a serious case backlog. A better hypothesis would therefore be that many employers and unions had strong economic motives for hiring blacks and women and used the law as an excuse for doing so. An excuse is needed because before it became illegal to discriminate employers apparently were sufficiently concerned about adverse reactions from white customers or employees that they would not hire blacks even when it might otherwise have been profitable for them to do so. A major objective of our study is to examine the precise conditions under which those responsible for racial employment patterns will change behavior and the role law plays in causing these changes.

Likewise, Federal EEO compliance activities pursuant to Executive Order 11246 have been subject to evaluation by the U.S. General Accounting Office,[24] the U.S. Commission on Civil Rights[25] and various econometric studies. The econometric studies evaluate impact by comparing the EEO performance of government contractors with noncontractors in the aggregate. Such studies conclude that the overall compliance activity through 1972 had been minimal at best.[26] The Commission on Civil Rights and the Government Accounting Office study suggest that such results may be due to insufficient implementation of the Executive Order. Both point to inadequacies and failures in the compliance process as it operates in practice.

A Framework for Analysis

In our previous work on black employment patterns and remedies to improve black employment patterns,[27] we have found a systems framework which is much better than the orthodox or neoclassical economic theory of discrimination for viewing labor market discrimination. A systems framework is more relevant and useful because it provides an understanding for the basic forces causing and perpetuating institutional discrimination as well as insight for developing appropriate antidiscrimination policies.

Conception of Discrimination

In order to make it fit the wage theory mold, orthodox economists define discrimination as a taste for which an economic agent acts as if he were willing to pay something "to be associated with some persons rather than others." This definition creates a number of conceptual problems. First, it assumes discrimination to be a "physical" phenomenon -- a desire by whites, for example, not to associate with blacks, which scarcely conforms with reality, where whites have been in close physical association with blacks. Clearly, discrimination is more a status or caste phenomenon, a concept which makes the theory more general because the physical phenomenon surely cannot be applied to sexual discrimination. Discriminators object to discriminatees partly because the latter are generally regarded to be "inferior" people who would lower the status of the discriminators.

Motives of the Economic Agents

But a theory of discrimination should show how discrimination interacts with the motives of certain actors. The neoclassical model does this, in part, by assuming that actors with "discrimination coefficients" modify the usual motives specified in the neoclassical utility functions. The model assumes, we think correctly, that employers are motivated mainly by profits but this motive is modified by a "taste for discrimination" or a "perception of reality." If the model assumes "physical association" to be a problem it is difficult to see why employers, especially in large firms, would discriminate against blue collar workers with whom employers would not be associating. However, it is possible that discrimination by employees could be transmitted to employers, causing them to act *as if* they had discrimination coefficients themselves. If employers have status motives for discrimination, they would not object to hiring discriminatees for "inferior" jobs, but would object to hiring them for higher status jobs.

The neoclassical model also seems to make unrealistic assumptions about the motives of white workers, who probably are more responsible than employers for discrimination in *blue collar* jobs. The neoclassicals assume white workers with discriminatory attitudes to be mainly motivated by wage rates. This assumption leads to some curious results. First, white workers are presumed to demand higher wages to work with blacks who are perfect substitutes. This is curious in view of the usual neoclassical assumption that people act rationally, because surely white workers could see that such demands would be self-defeating because blacks would displace whites. White workers are more likely to demand that blacks be excluded entirely from "status" jobs than to demand racial wage differentials.

Moreover, the white workers' basic motivation is likely to be *job control* rather than wage rates. The wage rate is an important part of the job, but the job's status, working conditions, stability, opportunity for advancement, and the extent to which workers participate in the formulation of job rules, also are important considerations. Discriminators are likely to want to monopolize the better jobs for themselves and will use race, sex, etc. as a means for doing so.

The conceptual framework we have found useful for policy analyses of discrimination specifies the motives of the various actors and the contexts within which they operate on the basis of empirical evidence rather than *a priori* deductive reasoning. Our formulation could be called a "systems" model and is similar to the developed for industrial relation by John Dunlop in his *Industrial Relations Systems*.[28] However, it is not possible to present a definitive comparison of this alternative formulation with the neoclassical model because they have different objectives. Our approach is less designed to be compatible with a general equilibrium model and therefore is less "rigorous," but, hopefully, more relevant for understanding the basic forces causing and perpetuating discrimination and affords more insight into appropriate antidiscrimination policies. Each group of actors in the racial employment process develops mechanisms to improve their power relative to the others. In this formulation, wages merely constitute one aspect of the job.

Secondly, a systems model assumes racial employment patterns in any given situation to be products of the power relationship between the actors and the specific environmental contexts within which they operate. These relationships between the actors and the specific environmental contexts can be empirically determined to some extent and, while relatively stable in the short run, change through time and involve dynamic mutual causation rather than one-way causal relationships.

The Actors

The main actors involved in the determination of racial employment patterns are managers, white workers, black workers, unions, and government agencies responsible for the implementation of antidiscrimination and industrial relations policies. The main environmental features influencing racial employment patterns include: economic and labor market conditions, community race relations, the distribution of power in the larger community, industry structure and growth potential, the labor market skills, education of black and white populations and the requirements of various companies and industries, and the operation of labor market institutions.

Employers

We have argued that the employer's main motive is profit maximization and status. However, profit maximization must be considered in a much broader context than the effect of individual marginal productivities on wages.

Management hiring decisions also will be influenced by firm size, industry structure, and the nature of labor supplies. The strongest factor influencing the black workers' ability to combat discrimination is not marginal productivity of each worker but total labor supplies to meet management's requirements if whites strike or boycott. In the systems model, larger supplies of labor increase bargaining power. Whites will rarely be able to exclude large supplies of blacks qualified to take their place. Moreover, where there are adequate total labor supplies, employers frequently prefer minority workers for certain kinds of jobs because the limited job options available to blacks and their traditional employment in those occupations make them dependable sources of labor. Blacks have been preferred mainly for menial and disagreeable occupations, but also for some higher paying jobs such as musicians, athletes, trowel trades in the construction industry, waiters, and longshoremen.

White Workers

As noted earlier, our conceptual model assumes white workers to be primarily motivated by status and job control consideration in excluding blacks from "their" jobs. However, whether or not whites succeed in excluding blacks depends on their ability to bring pressure to bear on the employer. If whites are in sufficient supply to fill particular occupations, in the absence of countervailing powers, employers will find it profitable to hire only whites. However, if blacks are in sufficient supply to meet the employer's labor requirements, he might turn to them to weaken white unions. He will not necessarily pay the black workers a different wage, but their presence tends to moderate wage pressures unless blacks and whites form a united bargaining front. Similarily, the white workers' bargaining power would be weakened even if blacks are in helper or other mislabeled occupational categories while really performing the same jobs as whites. Bigoted whites are not likely to quit good jobs because of their racist attitudes, but neither are they likely to demand wage differentials to compensate for their prejudices. Even assuming they have adequate knowledge of alternatives, prejudiced whites are likely to stay on their jobs if moving is costly in terms of loss of seniority, good wages, and the advantages of specialized nontransferrable job skills in places where they have worked.

Unions

White workers will use the unions they control to preserve and ration job opportunities. Consequently, the union does not ordinarily create job discrimination, but might be used to perpetuate the exclusion of blacks from certain jobs or to strengthen job segregation within plants.

Race enters union operating procedures in a variety of ways. Different kinds of unions have different motives, procedures, and control mechanisms, and therefore will react differently to the presence of black workers in an industry or trade. Unions are motivated by job control and status considerations to keep blacks out. Whether or not these unions are able to bar minorities depends mainly on their control of entry into the occupation. Craft unions, for example, ordinarily have considerable control of the supply of labor. The main job control instruments of craft unions are control of training, entry into the trade and union, and job referrals. In order for blacks to penetrate these crafts and unions they must ordinarily either threaten the unions' control instruments or inflict monetary losses on unions.

Industrial unions generally have adopted different procedures mainly because they confront different situations, not because their members had any more or less racial prejudice than craftworkers, although job status considerations seem to have been weaker in the case of industrial unions. But the main difference between craft and industrial unions is that the latter have little direct influence over hiring. In order to organize their jurisdictions, industrial unions must therefore appeal to the workers hired by the employer. Thus, if blacks have been hired in competition with white workers, the union's ability to organize and its bargaining strength will depend on its ability to attract blacks.

Union racial practices also are influenced by union structure. Since federations and national unions have broader political objectives than the locals, the motive for racial equality increases as we move from the local to the national level. Moreover, national craft unions also have stronger motives to take in blacks than their locals because the national's power depends to some extent upon the size of its membership, whereas the local often conceives its power to depend more narrowly on control of labor supplies in local labor markets.

Blacks

The blacks outside craft unions derive their power mainly from the extent to which they can threaten the wage rates and job control procedures of discriminating white union members and their leaders; this in turn depends primarily on the number of blacks in a labor market who possess the necessary skills to compete with white union members and secondarily on the extent to which the black community and antidiscrimination forces are organized to overcome white resistance to the admission of blacks. Even if civil rights forces are well organized to achieve this objective, they will have limited impact unless they produce black applicants for employment, upgrading, apprenticeship, and/or journeymen status who meet the qualifications imposed by unions and employers or unless they successfully challenge the standards and specifications themselves. These considerations make it obvious that an effective strategy to overcome local union resistance ordinarily will require considerable attention to local labor market conditions and the control mechanisms used by the local union to regulate labor supplies and control jobs.

Environmental Factors

These specific and immediate forces affecting black employment patterns are influenced by such environmental factors as the relative amount and quality of education available to blacks, race relations in the larger community, the age and sex composition of the black work force, alternative income sources available to black workers and their families, housing patterns and transportation costs relative to the location of jobs, the physical and emotional health of blacks relative to whites, whether an industry is growing or declining in terms of employment, black and white migration patterns, the structure of industry in terms of its customers (blacks, whites, other employees, or government), general business conditions, skill requirements and job structures within industry, the black community's relative accessibility to job information, and the processes through which employers and unions recruit and train workers for jobs.

Although all of these factors are important determinants of black employment patterns, some are more important and measurable than others. General business conditions are very important, because tight labor markets facilitate the employment and upgrading of blacks. However, this view must be qualified, because experience makes it clear that tight labor markets are not sufficient causes of change. Many cities which enjoyed low official unemployment rates during the 1960s also had stable racial employment patterns between 1920 and the 1960s. Moreover, there is a difference between a labor market where unemployment is declining and one where unemployment is low and stable. Similarly, the overall unemployment rate obscures particular labor market conditions which prevent blacks from obtaining jobs. Finally, concerted efforts to change institutional arrangements can make it possible for black employment to increase in a particular category even when white employment is falling.

The systems model has some policy implications which are similar to those of the neoclassical model. The neoclassicals are correct in stressing measures to increase black productivity as a means of improving their economic positions. But they are wrong in assuming that competitive forces alone will gain blacks access to the jobs for which they qualify themselves. Policies must be taken to overcome employer and community opposition and white workers' control of jobs. Indeed, if blacks are unable to gain access to jobs there is no effective way they can acquire the on-the-job training so essential for access to many better jobs. Black workers certainly are not going to be able to gain access to many of these jobs and on-the-job training opportunities by agreeing to work for lower wages than white incumbents.

The neoclassical model gives no place to group activities in changing employment opportunities, whereas a systems model stresses the need for group action to initiate changes in rules and laws to which individuals adapt.

The systems model also stresses the need to explore the relationships between attitudes, overt and institutional discrimination, and market forces, in order to determine how discrimination can be reduced or eliminated.

The policy implications for combatting discrimination depend in part on whether we accept the "taste for discrimination" of the neoclassical model or "perception of reality" formulation. The former would imply measures to reduce discrimination tastes directly or indirectly through competitive forces. The latter would require more accurate labor market information to cause the probabilities of selecting qualified whites and blacks to converge.

The present study moves from the level of the aggregate to the particular to examine specific cases where enforcement action has been taken. In viewing individual cases -- some of which have been effective and some not -- it is hoped that insight can be gained not only into whether EEO enforcement works but why it succeeds or fails.

In Chapter 2, attention is focused on five individual court cases which reflect the key issues in integrating the workforce of the construction industry: union entry and job referral. Chapter 3 examines the effectiveness of compliance efforts with five major shipyards across the country. In addition to entry to craft jobs, upgrading and seniority systems are key issues in this industry.

Chapter 2

COMBATTING EMPLOYMENT DISCRIMINATION IN UNION ENTRY AND JOB REFERRAL THROUGH LITIGATION: THE CASE OF CONSTRUCTION

Introduction

In the past decade, the construction industry has received more nationwide attention with regard to racial employment discrimination than perhaps any other sector of the economy. There are several reasons way this industry has been singled out for special attention. First, construction activity is highly visible since a great deal of the work occurs outdoors. A segregated workforce is thus easy to recognize and can, especially if the project is in a minority neighborhood, prove to be an attractive target for individuals who feel they have been discriminated against. Second, construction wages are relatively high and some of the required skills can be learned with a minimum of formal education. A high school diploma with algebra is the maximum formal education required for any construction trade. Third, a significant share (about 20 percent) of construction is financed either directly or indirectly (through matching grants) by the Federal Government. Expending federal dollars on projects where discrimination is practiced seems particularly unfair to minorities.

In addition to the above factors, desegregation of the construction industry has taken on a symbolic importance to minorities because of the building trades unions' vigorous resistance to the admission of minorities. As late as 1972 the Equal Employment Opportunity Commission reported that, although there had been an overall increase in minority membership in construction unions, minority membership in the higher skilled, better paying unions had not significantly increased.[1] Only in isolated cases have demonstrable gains been made in these more prestigious crafts. Employment gains have been primarily in unions with already high minority participation rates (e.g., laborers, roofers, trowel trades). The very fact that so much energy has been expended with so small an apparent gain seems to have hardened minority resolve to enter these crafts.

The problem of dealing with discrimination against minorities in the construction trades has been complicated because the discrimination has, at least in recent years, been more institutional than overt. Minorities have generally been at a disadvantage in meeting the qualifications for apprenticeship programs, since both the quantity and the quality of their formal education are lower than otherwise comparable whites. Moreover, the aspirations of minority youths have been conditioned by the realities that have faced their older peers. Consequently, unions could claim, and be technically correct, that the dearth of minority apprentices was due to the tiny number of applicants. Overt discrimination was unnecessary in such an atmosphere.

Several approaches have been employed to deal with the underrepresentation of minorities in construction unions:

1. Plans - Two types of plans have been used to encourage the use of minority construction workers. "Imposed" plans, such as the controversial Philadelphia Plan, have specific federally-imposed goals and timetables with respect to minority employment. If the goals and timetables are not met the relevant unions or contractors are declared in noncompliance and are, theoretically, not eligible to participate in large-scale federal projects unless they can demonstrate that they have made "good faith" efforts to meet them. Penalties for violating the plan run from contract suspension or cancellation to debarment from future work. In practice this power has seldom been used and then only to briefly delay contract awards. Imposed plans have been strongly resisted by both unions and contractors, who perceive that for a while they were successful in avoiding imposed plans by negotiating with the government "hometown" plans, where the goals and timetables are set by mutual agreement. Minority groups have generally opposed this later concept as they have been unwilling to depend on "good faith" efforts in a voluntary environment. As a consequence of the limited progress generally made by "hometown" plans the Department of Labor has, since the early 1970's, relied increasingly on the use of "imposed" plans.

2. Outreach - Outreach programs are minority-based recruitment and counselling efforts which search minority communities for candidates who can meet the apprenticeship or journeyman standards of the various trades. The organizations have sometimes been associated with an imposed or hometown plan, but more often act as independent agencies financed by government or private foundation grants.

3. Law - Legal sanctions against discrimination in the construction industry have taken two forms: executive action and civil rights law. Since President Roosevelt issued the first Executive Order during World War II requiring that all federal contractors adopt nondiscriminatory employment practices, federal agencies have required nondiscrimination clauses in contracts with private employers. The Office of Federal Contract Compliance, which promulgated the Philadelphia Plan, has had general responsibility for enforcing these contract clauses. Title VII of the Civil Rights Act of 1964 has resulted in a number of legal decisions and subsequent enforcement activity regarding the employment rights of minorities in the construction trades.

The specific purpose of this section is to assess the extent to which, if at all, litigation has been a successful tool in promoting equal employment opportunity in the construction industry. While any progress toward integration of the construction trades involves interaction of all the policy tools used and a myriad of other factors, it is hoped that through close scrutiny of five Title VII lawsuits we can sort out the communalities of success and failure and make some general conclusions regarding them. Particularly, we wish to address, under varying conditions, the question of whether the litigation was an essential element in the changes in the status of minorities in the construction industry, or whether the litigation was inconsequential. To this end we turn now to study five cases: U.S. v. Sheet Metal Workers Local 36 (St. Louis), Local 53 v. Vogler (New Orleans), Dobbins v. Local 212 (Cincinnati), U.S. v. Lathers 46 (New York), and U.S. v. Ironworkers 86 (Seattle).[2] The particular cases studied were selected in consultation with the EEOC and the OFCC and clearly focus on the critical issues on discrimination in the construction industry: entry and job referral.

St. Louis - U.S. v. Sheet Metal Workers Local 36

Local 36 of the Sheet Metal Workers International Association (SMW) has jurisdiction in St. Louis and 44 counties of eastern Missouri. In 1966 the membership of SMW Local 36 consisted of approximately 1,250 journeymen, all of whom were white and 110 apprentices, one of whom was black. The other union involved in this suit, Local 1 of the International Brotherhood of Electrical Workers (IBFW), operates in St. Louis and 24 counties of eastern and southern Missouri. In 1966 IBEW Local 1 had no blacks among the approximately

2,000 construction journeymen and apprentices.[3] In 1966 the St. Louis SMSA was 36.0 percent black with other minority representation negligible.

Both unions were engaged, beginning in 1964, in the construction of the "Gateway Arch" in downtown St. Louis. The project was supervised by the National Park Service and was intended to dramatize the role of St. Louis as the "gateway to the west." In 1965 a coalition of minority groups, headed by black civil rights activist Percy Green, began to voice objections concerning the racial composition of the workforce on the project. Green pointed out that the construction sites of the arch and that of the adjoining Busch Stadium were in a previously black urban renewal area. Federal action on the composition of the workforce was precipitated by a series of protests culminating in a demonstration during which Green chained himself to the top of the arch.

The Park Service responded to these pressures by requiring each contractor to thereafter employ a minimum percentage of minority workers. When the general contractor subsequently was forced to engage a black-owned non-AFL-CIO plumber's shop (Smith Plumbers, whose workers were affiliated with the Congress of Independent Unions [CIU]), the AFL-CIO workers walked off the job. The AFL-CIO unions contended the walkout was due to the presence of non-AFL-CIO workers, but black leaders (particularly Green and Arthur Kennedy of the NAACP) pointed out that the CIU local was certified by the National Labor Relations Board and ascribed racial motivation to the work stoppage. At the request of the NAACP, the Department of Justice investigated the situation.

In February 1966 the U.S. Attorney General filed a Title VII suit against four of the unions involved in the walkout: IBEW Local 1 and SMW Local 36 plus Plumbers Local 5 and the Steamfitters Local 562. This was the first suit filed by the U. S. under Title VII. The government alleged that the unions had: (1) failed to admit blacks on a nondiscriminatory basis, (2) failed to operate their respective hiring hall referral systems in a nondiscriminatory manner, (3) failed to inform blacks of opportunities to become members and (4) failed to organize employers who employed blacks. Prior to the trial the Plumbers and Steamfitters signed a consent decree which admitted the substantial points of the government's complaint and committed the unions to remedial action.

The District Court denied relief to the U. S., finding that although both of the defendants had excluded blacks prior to the effective date of Title VII (July 2, 1965) there were no specific instances of discrimination after that date and in fact both locals had made post-act efforts to recruit blacks. The Court of Appeals reversed the District Court's findings. The decision held that there was no evidence that either of the locals had changed their pre-1965 discriminatory policies and that such discriminatory policies continued to influence the employment possibilities for blacks after 1965.

In addition to requiring that the unions in the future admit blacks on a nondiscriminatory basis, the relief granted by the Court of Appeals included the following provisions: (1) the experience requirements of the locals (which required set amounts of time under the collective bargaining agreement before achieving journeyman status) were to be waived in the case of blacks who had gained equivalent experience outside the collective bargaining agreement; (2) reasonable steps were to be taken to make it known to blacks that all persons were permitted to use the referral system without regard to race; and (3) (for SMW Local 36 only) subjective admission procedures were to be made more objective so as to permit review. It is noteworthy, however, that the decision contains no specific reference to goals for minority membership. The unions were only required not to discriminate in the future.

The decision against the IBEW Local 1 and SMW Local 36 did provide a demonstration effect which caused other St. Louis unions to reevaluate their admission and referral practices. The joint deliberations of these unions and the corresponding contractor associations resulted in the signing of the St. Louis Supplemental Manpower Agreement or Hometown Plan in October 1969. Seven crafts (including Local 36)[4] and their respective trade associations signed the agreement. The plan projected that minorities were to comprise 20 percent of the work force within five years. The Joint Administrative Committee of the St. Louis Supplemental Manpower Agreement (funded by the Department of Labor) was established to implement the plan. The Committee and an additional outreach program run by the Urban League (Project LEAP) combined to place about 250 minorities in the trades, as either beginning apprentices or trainees (individuals given some advance credit in the apprenticeship program for previously acquired skills), in their first year of operation. The Hometown Plan, however, contained exact goals for only the carpenters and was elsewhere to be enforced only insofar as it was "...consistent with possible fluctuations of industry manpower needs and demands."[5] The plan was rejected on this basis by the Department of Labor. The carpenters were allowed to remain under the Hometown Plan.

The Department of Labor in July 1971 announced an imposed plan for 16 construction trades and at the same time withdrew the funding of the Joint Administrative Committee. IBEW Local 1 and SMW Local 36 were included and are thus under the jurisdiction of both the Court and the imposed plan. Under the plan no contracts are awarded for federally-involved construction projects exceeding $500,000 unless the bidder agrees to specific minority utilization goals in all (including non-federal) work. The plan seeks an increase of approximately 2,500 minority craftsworkers in 1976. The acceptable minimums by craft are given in Table 1. A 197[illegible] survey of the 16 crafts, however, revealed that only five had minority percentages above the minimums given in Table 1. The results of this survey are given in Table 2.

The reason most often cited for this continuing under-representation of minorities in the building trades is the sluggishness of construction activity in St. Louis. Unions have argued that to admit large numbers of minorities when union membership is virtually stagnant or declining would require the displacement of whites. This sluggishness is evidenced by data given in Table 3 which reports the value of building permits issued in the city of St. Louis from 1960-72.

The erratic behavior of construction activity in St. Louis has no doubt made integration of the building trades more difficult. It might in fact be argued for the unions that the increase in minority employment accomplished in the face of a decreasing demand for construction workers actually understates the net gains to minorities, since minority employment has in the past typically decreased absolutely as unemployment rises. But under the law, neither of these arguments is a sufficient excuse for the plan failing to meet its goals. Title VII requires, not that jobs be available, but only that minorities be given equal access to the jobs which are available.

Table 1
Imposed Minimum Minority Representation

Crafts	1/71-12/71	1/72-12/72	1/73-12/73	1/74-12/74	1/75-12/75
Asbestos Workers	3.2%	3.7%	4.2%	4.7%	5.2%
Boilermakers	20.2	23.9	26.6	30.3	34.0
Bricklayers	6.2	7.8	9.4	11.0	12.6
Carpenters	2.2	3.7	5.2	7.7	8.2
Cement Workers	4.1	6.4	8.7	11.0	13.3
Electricians	3.4	6.9	8.5	11.1	13.6
Elevator Constructors	2.5	4.1	5.6	7.2	8.7
Glaziers	5.7	11.5	17.2	23.0	28.7
Ironworkers	3.4	4.8	6.2	7.6	9.0
Lathers	6.2	10.7	15.2	19.7	24.2
Operating Engineers	3.2	5.7	8.2	16.7	13.2
Painters and Paperhangers	6.1	10.9	15.6	20.4	25.1
Plumbers and Pipefitters	4.0	6.2	8.4	10.6	13.2
Roofers	7.1	9.6	12.1	14.6	17.1
Sheetmetal Workers	4.5	9.0	13.5	18.0	22.5
Tile Setters	2.4	4.0	5.6	7.2	8.8

Source: Department of Labor News Release dated July 7, 1971.

Table 2

Minority Representation in the St. Louis Construction Trades 1972

Craft	Active* Membership	Minority Journeymen	Minority Apprentices	Minority Trainees	Percent Minorities	1972 Minimum Percent
Asbestos Workers	300	0	5	0	1.6	3.7
Boilermakers	56	0	3	0	5.4	23.9
Bricklayers	1,000	69	1	3	7.3	7.8
Carpenters	3,210	471	44	55	17.8	3.7
Cement Workers	431	27	9	10	10.7	6.4
Electricians	1,600	46	20	20	5.4	6.9
Elevator Constructors	212	2	6	0	3.8	4.1
Glaziers	182	1	2	0	1.6	11.5
Ironworkers	700	10	10	20	5.7	4.8
Lathers	239	4	2	0	2.5	10.7
Operating Engineers	800	71	15	13	12.4	5.7
Painters and Paperhangers	1,352	82	22	0	7.7	10.9
Plumbers and Pipefitters	2,186	66	28	15	5.0	6.2
Roofers	420	18	19	4	9.8	9.6
Sheetmetal Workers	650	2	15	25	6.5	9.0
Tile Setters	115	1	1	0	1.7	4.0
Total	13,453	870	202	165	9.2	

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*An active member is defined as an individual who has worked or applied for work at the hall in the last three months.

SOURCE: Confidential Survey.

Table 3

Value of Building Permits Issued in the City of St. Louis 1960-72 (in current dollars)

Year	Valuation
1960	$48,661,702
1961	77,091,372
1962	66,176,923
1963	67,246,719
1964	124,012,424
1965	69,322,546
1966	126,062,507
1967	99,364,322
1968	100,315,225
1969	95,032,325
1970	77,752,879
1971	54,485,996
1972	78,144,561

SOURCE: Building Permits Department, City of St. Louis.

Another apparent reason why the St. Louis plan has failed to meet its goals is the seeming indifference of the parties concerned towards its enforcement. For example, no minority organization has maintained the steady pressure which might have forced compliance. The two local outreach agencies, Project LEAP and the Joint Administrative Committee, owe their existence primarily to the defunct hometown plan and are, as a result, understaffed and underfunded. The nearest Office of Federal Contract Compliance representative, which is technically in charge of monitoring the plan, is in Kansas City. The U. S. Attorney's office refers any complaints to Washington.

The status of minorities in the St. Louis building trades has thus improved but the progress has fallen well short of even the most modest expectations outlined in Table 1. With this result, can any assessment be made of the net impact of U. S. v. Sheet Metal Workers 36?

The litigation was clearly an important motivating factor in the creation of the St. Louis Hometown Plan, but one must recall that this effort was judged insufficient by the Department of Labor. The imposed plan which followed would probably have come into being whether or not the court case (or the Hometown Plan) had ever existed. Since enforcement of the court order has, for all practical purposes, been dominated by the enforcement activities of the imposed plan, one is forced to conclude that the court's decision was co-opted by a relatively ineffectual plan which it had no significant role in bringing about. The net impact of the court case has thus been negligible.

New Orleans - Local 53 v. Vogler

Local 53 of the International Association of Heat and Frost Insulators and Asbestos Workers represents insulation and asbestos workers in southeastern Louisiana (including New Orleans and Baton Rouge) and western Mississippi. Local 53 effectively controls employment and training opportunities in this area through its exclusive bargaining agreements with all major firms doing insulation and asbestos work. In 1966 there were approximately 1,200 workers employed under the auspices of Local 53. Of the 1,200 only 282 were actually union members, including 64 improvers (apprentices). The remaining workers were permit workers or transfers from sister locals. None of the 1,200 workers was either black or Mexican American. Within the jurisdiction of Local 53 over 45 percent of the male work force between ages 18 and 30 was black.[6]

In order to be referred to an insulation or asbestos job workers were required to sign registers at the union hall. Union members were assigned to different priority groups based upon experience in the trade and residency in the area. The order of referral within these priority groups was determined chronologically. Once all the union members were employed, permit holders were referred. The permit workers included members of other trade unions such as the Plasterers Local 93, who were qualified to perform the tasks of an insulation or asbestos mechanic (journeyman).

It was the policy of Local 53 to restrict membership to sons or close relatives of its members. To become a member an applicant had to obtain written recommendations from three members and had to be approved by a majority of the members voting by secret ballot. In the four years preceding 1966, Local 53 had accepted 72 improvers; 69 were sons of members and three were nephews of members who had raised them. The local did not admit new mechanics who had not been improvers, regardless of their qualifications.

In 1966 Paul Vogler, a white non-union asbestos worker, filed a complaint with the New Orleans office of the EEOC against Local 53 and a New Orleans contractor, Mc Carty, Inc. Vogler alleged that he was refused employment because of his non-union status and because of efforts to assist a black friend, Cashmiere Joseph, attain union membership. The EEOC investigated the complaint and found reasonable cause to believe the charges were true. The EEOC then attempted to conciliate the parties, failed, and referred the case to the Department of Justice.

In December 1966 a Title VII suit was brought against Mc Carty, Inc. and Local 53. The complaint against Mc Carty, Inc. was dismissed by the District Court which ruled that the contractor could not hire blacks because of its exclusive bargaining agreement with Local 53. The Court found that

Local 53 had engaged in discrimination against blacks and issued an injunction against the union (later upheld by Fifth Circuit Court of Appeals) which:[7]

(1) prohibited discrimination in excluding persons from union membership or referring persons for work;

(2) prohibited use of members' endorsements, family relationship or elections as criteria for membership;

(3) ordered that four individuals be admitted to membership and nine others be referred for work;

(4) ordered the development of objective membership criteria and prohibited new members other than the four until developed; and

(5) ordered continuation of chronological referrals for work, with alternating white and Negro referrals until objective membership criteria are developed.

The Court further required that Local 53 increase its membership to 390 and its number of improvers to 130. The local was required to immediately admit 44 specifically named blacks (including Joseph) as mechanics and 55 blacks as improvers. If any of the specifically named blacks refused the offer to become mechanics, another black would be substituted by the Court. All improvers with at least 4,800 hours of experience were to be promoted to mechanic status. The effect of the decree was to boost membership to 520. Ninty-nine of these members were black.

In order to fulfill the injunction's requirement that blacks and whites be referred alternately, Local 53 was instructed to maintain different work registers for blacks and whites. The decree specified that the work registers for each race were to be broken down based upon experience. There were to be two categories; the first to consist of workers with more than five 1,200 hour years of experience in the insulation or asbestos trades, and the second to consist of workers with less than five years of such experience. Preference for referrals would be given to those in the first category. The union, however, was eventually allowed to establish a different system inasmuch as very few of the blacks had five years experience. In the revised system the register for blacks was broken into two categories; those with at least 500 hours of work were listed in the "A" register. The register for white workers was divided into three categories. Those workers with five years and at least 4,800 hours of work were listed in the "A" register; those with less than five years but at least 4,800 hours of work were listed in the "B" register. Those with less than five years and 4,800 hours were placed in the "C" register. Assignment from a register was based upon chronological order in the register.

Membership in Local 53 has since 1968 remained approximately constant at 520 members, with 99 of the members black as required by the decree. The local has, however, experienced a high rate of turnover in its black membership. By late 1974 less than one-fourth of the original 44 black mechanics remained in the local. It has been widely alleged that the high number of quits among blacks has been due to a combination of inadequate training opportunities, inferior job assignments and harassment on the job. But none of these charges has ever been substantiated and brought before the Court, despite the fact that such practices are clearly unlawful.

The U. S. v. Local 53 case has provided a demonstration effect which has induced other New Orleans construction trades to participate in a hometown plan. The New Orleans (hometown) Plan was funded by the Department of Labor in 1971. The plan's main purpose is to provide qualified minority applicants so that its goal of attaining at least 20 percent minority representation in each signatory craft by 1976 can be reached. The 20 percent goal is based on minority work force representation in New Orleans's parish (county). The plan's director, Lambert Boissiere, has been active in attempting to force recalcitrant unions to sign the plan and comply with its goals. At his behest, three New Orleans construction locals, the sheet metal workers, electricians, and plumbers, were charged in 1973 with Title VII violations by the Department of Justice. Although all three cases were settled before trial, the three locals are now effectively under the control of the hometown plan. By 1975 22 crafts with New Orleans jurisdiction had signed the hometown plan.

As the results given in Table 4 indicate, none of the eleven locals, who at the time they signed the plan had less than 20 percent minority membership (called non-exempt locals), had met their established goals by October 1974. Several of the unions were however near their goals and the total percentage effort (82.0 percent) was impressive.

Table 4

Minority Representation and Goals for Non-Exempt Locals Goals and Figures Are as of October 1974

Craft	Goals	Minorities	Percent of Goal
Boilermakers	40	20	50.0
Carpenters	101	72	71.3
Electricians	163	155	95.1
Elevator Constructors	36	22	61.1
Glazers	12	11	91.7
Ironworkers	100	69	69.0
Operating Engineers	152	124	81.6
Painters	110	89	80.9
Pile Drivers	43	32	74.4
Plumbers	150	148	98.7
Sheet Metal Workers	75	63	84.0
TOTAL	982	805	82.0

Source: New Orleans Plan Administrative Committee Monthly Survey Report.

Boissiere and other minority leaders in New Orleans credit the progress which has been made to the continued threat of legal sanctions against the construction unions, and make a strong case that the initial prosecution of U. S. v. Local 56 was necessary to make this threat real. Thus, the Vogler case has apparently provided a strong positive impetus to equal employment opportunity in New Orleans.

Cincinnati - Dobbins v. Local 212

In January 1966, Anderson L. Dobbins, a black, filed a complaint with the Equal Employment Opportunity Commission (EEOC) against IBEW Local 212. Dobbins charged that the local had refused to admit qualified blacks, specifically Dobbins himself, to membership.

The jurisdiction of IBEW Local 212 includes Cincinnati and 13 adjoining counties of Ohio, Kentucky, and Indiana. Prior to 1968 the membership policies of the local were governed by its collective bargaining agreement, by the constitution of the International, and by its own bylaws. There were two methods of becoming a union member. One path was to go through the regular apprenticeship program and the other was to work four years in the trade for either a union or non-union contractor. In the latter case an examination was required before certification as a journeyman was granted. Although the bylaws required the union's examining board to meet at least once monthly, when there were applicants to be examined, the board met infrequently. There were no meetings between 1963 and 1968. This was true despite the fact that there were at all times applicants for membership and the union's membership was consistently lower than the number of electricians needed.

In 1966 IBEW Local 212 had a membership of 770 white males and had never had a black member. Between 1960 and 1966, 18 blacks applied for membership and nine of these made application after the effective date of Title VII. Also, although according to the collective bargaining agreement all employees of union contractors were required to become and remain members of the union from and after the 31st day following their employment, the union did not enforce this provision. Consequently, there were nonunion referrals. No blacks were referred prior to 1967.

In February 1967, the EEOC ruled that reasonable cause existed to believe that IBEW Local 212 was in violation of Title VII. Subsequent attempts to reach a voluntary settlement with the union were not successful and in May 1967, Dobbins, assisted by the local chapter of the NAACP, filed a Title VII suit against the electricians. In July 1967, the Department of Justice brought a separate action against IBEW Local 212, claiming general discrimination with respect to membership and employment opportunities. In September 1967, on the motion of the United States, the two actions were consolidated. In April 1968, the Cincinnati Electrical Joint Apprenticeship and Training Committee was added as a defendant.

The major findings of the Court in its judgment of September 1968, and orders of October 1968, were threefold. First, the Court found that the union's testing procedures bore no rational relationship to the qualifications of individuals for the trade and that the direct journeyman examination was administered too infrequently. The union was ordered not to administer examinations which were not reasonably related to the skills required in the everyday work of a construction electrician. The direct examination was to be conducted at least every three months. The union was further ordered to immediately admit Dobbins to full membership and to admit to membership other blacks, providing they passed an examination for journeyman electricians administered by the Northern Kentucky Electrical Authority.

Second, the Court found that the union's exclusive hiring hall agreement was not discriminatory per se but that the referral system as written into the collective bargaining agreement provided no guidelines for its actual application. The Court provided specific guidelines which guarded against further racial discrimination in job referral.

Third, the Court found that the Joint Apprenticeship and Training Committee had failed to accept the valuations of applicants by its own hired experts (transcript evaluation and aptitude) and had fairly consistently given preference to whites (especially relatives of members) over blacks. The committee was enjoined against this practice.

The impact of the Dobbins decision on equal employment opportunity in Cincinnati should be considered as a marginal but nevertheless important factor in the broader efforts to desegregate the Cincinnati building trades. The City of Cincinnati in 1960 was 27.5 percent black and the standard metropolitan statistical area was 12.0 percent black. (Blacks constitute the only significant minority group.) Employment opportunities in most of the skilled building trades were, however, open only to whites. Although precise data on the number of minorities in the trades in the early 1960s is not available, a 1952 report to the Cincinnati City Council accurately reflected a situation which held true as late as 1963:

> Within the unionized construction field, Negroes are found exclusively (or with purely negligible exception) only on common labor jobs, skilled jobs being white only. The Hod-Carriers and Building Laborers Union has about 75 percent Negro membership. On the other hand, the Carpenters, Bricklayers, Plasterers, Painters, Electricians, Plumbers, and Steamfitters are exclusively (or with negligible exception) white.[8]

The first serious challenge to these segregated conditions came in the summer of 1963 when the local chapters of the Congress of Racial Equality (CORE) and the NAACP demonstrated against the composition of the work force at the new downtown federal building. Over the next two years, desegregation efforts were extended to such employers as Proctor and Gamble, and Cincinnati Post, and the First National Bank. But in 1965, at the urging of Herbert Hill, National Labor Secretary for the NAACP, attention was refocused on the construction trades. Hill reasoned that the diffusion of effort across all employment was counterproductive and that construction, due to the large amount of federal funding involved, made a particularly attractive target.

The result of the flurry of demonstrations that followed was a Department of Labor funded manpower program, Journeyman Union Manpower Program (JUMP). The purpose of the grant was to upgrade to journeymen status semi-skilled blacks recruited by a city governmental agency, the Cincinnati Human Relations Commission. The program failed to make significant progress in increasing black membership in the building trade unions. Black leaders claimed that the failure was due to union intransigence. Union leaders claimed that the referrals from JUMP were not trainable and that the JUMP staff was not knowledgeable about the construction industry.

By 1968 demonstrations had resumed with attention focusing on the city's new sports complex, Riverfront Stadium, which was being constructed on an urban renewal site. The Dobbins case was contemporaneous with these demonstrations. A coalition of concerned parties from the trade unions, the contractor associations, and the black community was formed at this time and the result of their deliberations was what has become known as the Cincinnati Plan. Before discussing the specifics of the plan or its effectiveness, it is worthwhile to speculate on the motives which, if nothing else, brought these diverse economic actors to an agreement which has lasted for over six years.

The unions and the contractor associations were apparently motivated by the same factors. First, they had been subject to sustained demonstrations and charges of racism for over five years. The demonstration pressures were not, as they once might have hoped, lessening. The resultant financial losses and adverse publicity no doubt helped convince the unions and the contractors that some sort of reconciliation with the NAACP was desirable.

Second, pressure for union desegregation from the government both in the forms of direct court intervention (the Dobbins case) and contract compliance action, was mounting. The unions and the contractors were upset over what they considered to be intervention by public officials (judges and government bureaucrats) who had little or no understanding of the construction industry. For example, there was great fear that either a court or the Office of Federal Contract Compliance would impose a plan for black employment which would lower work and training standards. Additionally, there was fear that financial losses could result from either court fines or contract compliance sanctions.

As important as the change in the bargaining position of the union-contractor side was the continued presence of recognized black leaders (particularly Lucy Green of the NAACP) at the negotiations. Perhaps because of their own fatigue from having engaged in desegregation demonstrations almost continuously for five years and a feeling that the impact of such demonstrations was beginning to fade, these representatives endured a sometimes bitter debate within the local NAACP chapter over the negotiations and gave the eventual settlement credence in the black community.

The failure of the JUMP program and the resulting consultations with Professor Ray Marshall (then of the University of Kentucky and co-author of the book The Negro and Apprenticeship)[9] and Department of Labor personnel convinced the coalition that any new program must contain a strong outreach and training component. In October 1968, the Department of Labor funded the Preparation Recruitment Employment Program (PREP). PREP is an outreach program which searches the black community for young people who may qualify as apprentices. The program administrators admittedly "cream" in order to find minorities who will have a good chance of meeting union standards. The individual is given special classes to prepare the applicant for particular apprenticeship examinations. If successful, the individual enters the regular craft apprenticeship program.

PREP was augmented in April 1971, by the Journeyman Employment Training (JET) program. The JET program is designed for applicants who are beyond the regular apprenticeable age. Individuals are evaluated as to their experience level and are placed as trainees at the appropriate level of what is effectively the apprenticeship program. Some individuals are placed directly as journeymen. Evaluation of placement level is done by a committee composed of representatives of the contractors and the unions, one of whom must be black. An attempt is made to tailor the remainder of the training program to an individual's particular deficiencies.

The PREP-JET program has become known as the Cincinnati (Hometown) Plan and has been accepted by the Department of Labor as meeting contract compliance standards. Seventeen building trade crafts are signatory. Local 212 is both signatory to the plan and remains under the jurisdiction of the Court from the Dobbins case. (This was accomplished only after Local 212 was ordered by the Court to sign the plan. The electricians had originally refused to sign as the plan is apparently more of a binding constraint than was the court order.) The Cincinnati Plan seeks to raise the percentage representation of minorities in each of the crafts to at least 11.0 percent (slightly less than the percentage of blacks in the Cincinnati SMSA) in the five years from 1971 to 1976. Each craft was allowed to set its own intermediate goals in attaining the 11.0 percent standard. Six of the 17 trades have met or exceded their goals for 1974 (see Table 5). The overall percentage representation of minorities (8.1 percent) is heavily influenced by the black-dominated cement mason's union; without the cement masons the percentage of minorities falls to a less respectable 5.1 percent.

Table 5

Minority Representation in the Building Trades Covered by the Cincinnati Plan - October 1974

Craft	Membership	Minority Members	Percent Minority	Goal
Asbestos Workers	182	8	4.4	17
Boilermakers	333	25	7.5	16
Bricklayers	122	11	9.0	12
Carpenters	2,976	122	4.1	208
Cement Masons	457	320	70.0	20
Electricians	841	53	6.3	53
Elevator Constructors	298	14	4.7	22
Floor Layers	333	11	3.3	16
Glazers	114	5	4.4	10
Lathers	96	7	7.3	6
Marble Workers	91	4	4.4	8
Millwrights	467	14	3.0	17
Painters	822	37	4.5	53
Pipefitters	855	47	5.5	74
Plumbers	610	25	4.1	6
Sheetmetal Workers	663	55	8.3	47
Operating Engineers	700	49	7.0	49
TOTAL	9,960	807	8.1	634

SOURCE: October 1974 Survey by PREP-JET

Table 6

Construction Activity in the City of Cincinnati
1966 -1973
Current Dollars

Year	Total Estimated Construction
1966	$114,572,160
1967	119,158,200
1968	140,778,820
1969	114,317,340
1970	101,322,765
1971	182,873,975
1972	113,389,070
1973	134,543,540

SOURCE: Annual Reports of the Cincinnati Department of Public Works.

Two reasons are most often cited for this shortfall. The unions note that the gains which have been made were accomplished during a sharp drop in construction activity during 1972 and 1973. From a peak of $182 million in 1971 construction volume dropped to $113 million in 1972 and $134 million in 1973. Table 6 reports construction activity in Cincinnati since 1966, the year the Dobbins case was initiated.

The sluggishness of construction activity is, however, as we have previously noted, not an excuse for the shortfalls of the plan. Responsibility for the deficiencies of the plan must ultimately rest with the Office of Federal Contract Compliance (OFCC), which, although it has repeatedly noted the non-compliance of certain crafts, has yet to use its power to withhold funds. The OFCC may feel that the Cincinnati crafts have made a "good faith effort" and that overt action might cause the unions to become intransigent and in the end be counterproductive.

The progress which has been made by the Cincinnati Plan must be primarily attributed to aggressive action by Dobbins and black community groups, such as the NAACP and PREP-JET. Although the direct effect of the Dobbins case is minimal, since its role with respect to the Electrical Workers has been effectively usurped by the Cincinnati Plan and Dobbins himself no longer works as an electrician, the threat of further overt public intervention resulting from minority grievances does appear to be the principal motivating factor behind continued progress. One is forced to conclude, given the statistics in Table 5, that further aggressive action on the part of minorities will be required to move the Cincinnati Plan forward.

Seattle - U.S. v. Local Ironworkers 86, et al

The five Seattle unions originally charged in this suit were Ironworkers Local 86, Sheet Metal workers Local 99, Plumbers and Pipefitters Local 32, IBEW Local 46, and Operating Engineers Local 302. These locals have jurisdiction, with minor geographical variations, in Seattle and the surrounding area of western Washington. The number of black journeymen in each local at the time of the trial (February 1970) is given in Table 7. In 1970 the city of Seattle was 7.1 percent black.

Table 7

Black Journeymen in the Five Unions - February 1970*
Seattle

Union	Number of Journeymen	Black Journeymen
Ironworkers	920	1
Sheet Metal Workers	900	1
Plumbers & Pipefitters	1,900	1
Electricians	1,750	2
Operating Engineers	600	5

*All figures are approximate. The figures for the sheet metal workers and the plumbers and pipefitters include only their construction divisions.

Source: 8618 W. D. Washington 1970.

The first demonstrations protesting the racial composition of Seattle's construction unions occurred in the early fall of 1969. The protests were led by Tyree Scott, a black electrician who with his father ran a small electrical shop. Scott had recently joined several other minority contractors to form the Central Contractors Association (CCA). The CCA was concerned about the lack of opportunity for blacks in the construction trades. In August the group shut down a number of construction sites both in black neighborhoods and in downtown Seattle. An agreement was subsequently reached between the CCA and the affected prime contractors requiring that minority trainees be employed on the projects, but implementation of the agreement was blocked when the regular union members walked off the jobs in protest. The union members were ordered back to work by Federal District Judge William J. Lindberg, who found that the walkout was not due to a legitimate labor dispute. Lindberg also ordered 60 black trainees put to work immediately on five separate construction sites. The wages of the black workers were to be paid by Seattle's Model Cities grant. The program, however, was short-lived as the blacks, once on the job, were given no work assignments by the project foremen. Within one week, all the trainees had quit. They were not replaced.

The CCA renewed demonstrations in November 1969 and shut downs of construction sites at both the University of Washington and Seattle-Tacoma Airport ensued. Because of pressure principally from the construction contractors, who were anxious for financial reasons to halt the frequent work stoppages, the United States Department of Justice filed a Title VII suit against the five aforementioned unions and their respective Joint Apprenticeship Committees (JAC). The action alleged that the parties were discriminating against blacks both in admission and job referral. Specific examples were cited where each of the locals and the JACs had discriminated against blacks. The allegations brought against Local 86 and their JAC are illustrative of the evidence presented in the case.

The United States argued that Howard Lewis and Jettie Murray, both experienced black welders of journeyman capability, were denied referral and membership by Local 86 on account of race. In 1962, Lewis obtained an application for membership but couldn't find two sponsors. In 1966 he made two additional attempts to join. First, he was refused because he had not completed the required paperwork. Then he was flunked on a knot-tying test. Lewis joined the union only in 1969 when the Washington State Board against Discrimination ordered Local 86 to accept him.

Murray applied for referral in 1966 after having been advised that there was a need for welders in the ironworkers trade. He applied to the union on a regular basis for three months and was told there was no work. Murray contacted an employer directly and upon instructions went to the union hall for dispatch back to the employer as per the collective bargaining agreement. The business agent of Local 86 refused to dispatch him. The Washington State Board also found discrimination in this case.

It was additionally alleged that in 1969, two black permit-holders, Cornelius Bradford and William Bracy, were discriminated against in job referral. Two white permit holders, who had signed the work list after the blacks, were told that on the payment of a sum of money they would be referred out to work. Bradford and Bracy were not given such an offer.

The government charged the Ironworkers JAC with using aptitude tests which discriminated against blacks. Prior to 1967 applicants were not required to take the exams. When the test was first used, no minimum score was announced. In 1968 the JAC published minimum scores, after a pledge of nondiscrimination was made to the Washington State Board. Since the minimum scores were established, approximately 27 percent of the blacks taking the test had passed, while approximately 72 percent of the others taking the test had passed.

The decision of the United States to charge these five particular unions was made for two main reasons. First, the unions were large from a membership standpoint (a total of over 6,000 journeymen). The Federal Government realized that in order to produce witnesses who would attest to specific instances of discrimination they would have to confront the larger unions. This was also the reason that only evidence of discrimination against blacks was given. Although there was discrimination against other racial groups as well, the United States attorney found specific instances difficult to substantiate.[10] Second, the locals were prestigious (relative to other construction crafts) and paid high wages. Other less prestigious and lower paying construction trades (e.g., roofers, laborers) had long employed substantial numbers of blacks. The government wanted to penetrate the top of the construction profession.

Operating Engineers Local 302 signed a consent decree before the trial date. The Local's leadership apparently felt that the case for discrimination was strong and that it would be less costly in the long run to enter into a voluntary agreement. The union admitted the substantive points of the government's complaint and committed themselves to corrective action. Specifically, the union agreed to admit 50 minority apprentices for the following three years. The "Operating Engineers Plan", which was to recruit minority candidates and monitor their training, was subsequently funded by the Department of Labor.

The Federal District Court, with Judge Lindberg presiding, found in June of 1970 that the remaining four locals and three JAC's (the Electrician's JAC was acquitted) were guilty of pursuing a pattern and practice of conduct with respect to employment which had denied blacks because of their race the same opportunities made available to whites. At the time the judgment was made Judge Lindberg asked the defendants and the plaintiff to submit proposed remedies. The Court's order was issued less than two weeks later and was largely a product of the proposed remedy submitted by the Department of Justice. The most striking feature of the order is the detail in which the relief is spelled out. The Judge apparently agreed with the plaintiff's position that, in order to address not only the overt but also the institutional aspects of discrimination, a great deal of specificity was required. Both a general remedy and a remedy specific to each defendant was provided. The general provisions were:[11]

> (a) The defendants were enjoined from discriminating, with respect to acquisition or retention of membership or with respect to referral for employment, against any person because of race;
>
> (b) The defendants were required to implement a comprehensive record-keeping system which was to include racial and other background data on all applicants for either referral or admission to the union. The defendants were required to transmit these records to the plaintiff quarterly. The plaintiff would then report to the Court;
>
> (c) The defendants were required to initiate a program to disseminate information to the black community regarding employment opportunities in their respective trades;

(d) The Defendant Apprenticeship Committees were ordered to select and indenture a sufficient number of blacks to insure a level of black participation which would overcome the present effects of past discrimination. The Court provided guidelines for each craft; and

(e) The Defendant Apprenticeship Committees were required to implement "special apprenticeship programs" emphasizing on-the-job training to meet the special needs of blacks, with or without experience in the trade, who were too old for the regular apprenticeship programs. A Court Order Advisory Committee (COAC) was established to implement the program. The COAC was to include representatives from labor, the Contractors Associations, the minority community, and interested governmental agencies.

Again, the remedy relating only to Local 86 and the Ironworker's JAC is illustrative of the specific remedies applied to each of the defendants. The main provisions of the Ironworkers remedy were:

(a) Local 86 was required to offer journeyman membership to black ironworkers with over 700 hours of experience upon payment of the standard initiation fee;

(b) Local 86 was required to henceforth refer individuals for employment on the basis of the order in which they signed the work list in their particular priority grouping. The union could not require an examination on previous experience under the collective bargaining agreement as prerequisites to the placement of a black applicant's name on the work list. Because black journeymen had generally been denied the opportunity to acquire work experience the Court ordered that they could be called for work by contractors irrespective of their place on the work list;

(c) The union was ordered to provide immediate referrals and applications for membership to a list of individuals who had been the victims of discrimination; and

(d) The Ironworkers JAC was ordered to discontinue the use of culturally biased aptitude tests and was ordered to admit to its regular or special apprenticeship program six individuals who had been the victims of discrimination.

The degree to which the court order has subsequently been implemented has been largely a matter of resolving conflicts which have frequently arisen between the parties affected by the decision. The principal adversaries have been the black community and the defendant unions, with the principal forum for debate the COAC. Judge Lindberg has acted through the use of both supplemental orders and persuasion as a powerful third force in these discussions.

The first confrontation occurred only three months after the original order. While the decision was under appeal to the Federal Circuit Court (the decision was eventually upheld) the defendants were reluctant to take more than minimal action. Also the defendants for some time harbored hopes of replacing the court order with participation in the Seattle Hometown Plan. The COAC members originally appointed from the minority community were moderate and were unwilling to actively force issues in that forum. Tyree Scott had by this time split off from the CCA over worker-management issues and had formed, with the assistance of the American Friends Service Committee, the United Construction Workers Association (UCWA). The UCWA began demonstrations against the nonenforcement of the order in September 1970. Judge Lindberg reacted (reportedly he was furious) with a supplemental order which gave the unions ten days to indenture the required number of apprentices. Ninety blacks were in fact recruited by the UCWA and admitted to the apprenticeship program. Few of these individuals, however, remained on the job since (both the UCWA and the unions admit) no standards were set for their selection.

The UCWA subsequently requested that the COAC retain the UCWA to assist in recruiting and counseling. After initially approving the plan the COAC reversed itself, citing as the principal reasons the militancy of the UCWA and the threat of dual unionism. The minority representatives then walked off the committee and the chairman, Donald Close of the National Electrical Contractors Association, resigned. Close had voted with the majority and cited lack of confidence in him by the black community as the reason for his resignation.

Judge Lindberg issued another supplemental order altering the role of the COAC. The order provided for a nonvoting, impartial chairperson in addition to the other members and directed the COAC to more actively monitor the special apprentices. Professor Luvern V. Rieke of the University of Washington Law School was named chairperson. The judge still refused to allow the UCWA any formal role in the implementation of the original or supplemental orders.

Still there were only negligible increases in black participation in the defendant unions. Despite its specificity elsewhere the original court order had not provided timetables against which compliance could be assessed. Furthermore, economic activity in general and construction activity in particular began to decline in Seattle in 1971. Employment dropped sharply during the so-called "Boeing recession" and did not recover above the 1970 level until 1973 (see Table 8). The defendant unions thus argued that to provide equal employment opportunities to blacks would mean displacing whites. The unions made this argument despite the fact they continued to indenture white apprentices. Furthermore, since the U.S. Attorney's Office in Seattle had no one with full time responsibility for monitoring the order, quarterly reports from the defendants were often not filed.

In order to facilitate the placement of additional minority apprentices, the COAC in early 1972 recommended that the court amend, by decree, the collective bargaining agreements of the defendant unions so that instead of allowing the employment of one apprentice for a certain number of journeymen (the apprentice-journeyman ratio varies by trade) the ratio would become mandatory. The UCWA, shortly thereafter, dissatisfied with its lack of formal standing in Court decisions, renewed demonstrations in June 1972. On June 7 Judge Lindberg ordered that the apprentice-journeyman ratios be altered in accordance with the COAC recommendation.

The COAC was also again admonished to monitor the defendants' compliance more closely. To assist in this effort the COAC was instructed to act through those agents it deemed necessary; presumably including the UCWA. The UCWA, however, found this unsatisfactory as they had not been specifically named as the agent the COAC should employ. After another series of demonstrations the court "clarified" its earlier order and stated that all apprenticeship applicants were to be first referred to the UCWA for screening and that UCWA representatives were to sit on the COAC. The judge at this time also ordered that the Department of Justice assign someone in the Seattle U.S. Attorney's Office fulltime to monitor the case.[12]

Table 8

Population and Employment in the Seattle SMSA 1970-1973

	1970	1971	1972	1973
Population	1,424,611	1,432,800	1,411,900	1,409,400
Civilian Labor Force	640,500	633,900	630,500	644,200
Employment	579,000	550,900	567,400	595,400
Unemployment Rate	9.5	13.0	9.9	7.6

SOURCE: Employment Security Department, State of Washington, Annual Manpower Planning Report 1974, Seattle-Everett Washington Area.

These events have brought some movement toward desegregation of the defendant unions. The alteration of the apprentice-journeyman ratio has been particularly effective in opening new training opportunities and has additionally made the normal union grievance procedures available to agrieved minorities. However, the crafts are still generally short of the goals set for them by the court. Table 9 gives, as of December 1975, the number of each local. Allowing for normal attrition rates among apprentices none of the crafts are in compliance although some progress had been made in the five and a half years since the original order.

What factors have been important in determining the level of effectiveness of this decision? Progress has, as was mentioned above, generally been conditioned on the balance of power between the UCWA and the unions. The ability of UCWA to constantly maintain the threat of renewed demonstrations over an extended period of time has been one of the most important factors in keeping the decision at least partially enforced. It is extremely doubtful if the progress toward desegregation which has been made would have occurred as quickly without the activism of the UCWA. The UCWA has, by prodding the courts to enforce the law, forced the unions to accept more blacks than they otherwise would have. The role of the UCWA in providing qualified black applicants to the unions has also made it impossible for the unions to further argue that segregation is merely a matter of standards.

The COAC has proved to be a useful tool for insulating Judge Lindberg from the day to day acrimony between the parties. Further, some socialization has obviously taken place on the committee over the period since the original decision. The recent meetings have seen a much more cooperative spirit than did earlier meetings. For example, in 1974 the parties agreed, without direct judicial interference, to do away with special apprenticeship programs and concentrate entirely on the regular programs. It was found that the special apprentices were not trained well enough to perform the required work of the craft. Most of the remaining special apprentices transferred to the regular program voluntarily. Although the UCWA continued to argue that the program's failure was more a result of the unions' unwillingness to change their apprenticeship programs than a result of any conceptual weakness in the notion of accelerating apprenticeship training, they nevertheless agreed to the revision. Such an agreement would have been unthinkable as late as 1972. The credit for this spirit of semi-detente, it is generally recognized, goes to Professor Reike who appears to have convinced both sides to adopt a modified spirit of compromise. The agreement was incorporated into a consent decree, made on March 12, 1974, which abolished the special apprenticeship programs and for the first time established a set of goals linked to a definite timetable by which compliance could be measured.

Table 9

Apprentices, Graduates, and Goals by Craft, December, 1975

	Ironworkers	Plumbers & Pipefitters	Sheet Metal Workers	Electricians
First Year Apprentices	19	18	11	15
Senior Apprentices*	12	36	31	58
Graduates	28	28	19	8
Total	59	82	61	81
Goal	78	96	81	75
Percent of goal represented by senior apprentices and graduates	51.3	66.5	60.5	85.3

Source: Quarterly Report to Judge Lindberg, December 1975.

*Note: Senior apprentices are defined as apprentices beyond their first year of indenture.

Judge Lindberg himself has, of course, played an important role in enforcement of the decree, and probably would have been an important force even without the prodding of the UCWA. His behavior has been unique in Title VII litigation in the construction industry both because of the specificity of the original order and because of the large number of supplemental decrees. The judge has stated that he views this case as one of the two most important decisions of his career. Consequently, since the original decree, he has devoted a great deal of his resources both in and out of the courtroom to refinement of the principles involved. Moreover, since the Judge went into semi-retirement and cut his workload shortly after the Ironworkers Local 86 decision, he had relatively more time to spend with the case. Many potential conflicts have been resolved, without a formal decree, by the Judge engaging in moral suasion through the COAC.

The Lindberg decision, as it is called, is, at the minimum, an example of how an activist judge in conjunction with an activist aggrieved party (the UCWA) can force the construction trades closer to equal employment opportunity. At best it may provide a prescription for that goal. For proof of the relative effectiveness of this order one must look no farther than the Seattle building trade unions which are not covered by the order, but rather fall under the Seattle-King County Hometown Plan. Although reliable figures on minority representation on these other crafts are not available, it is generally conceded that, although they were subject to basically the same outside stimuli as the crafts under the court order, they lag behind the crafts who are under the court order.

New York - U. S. v. Lathers 46

Local 46 of the Wood, Wire, and Metal Lathers International Unions (Lathers) has jurisdiction in New York City and three counties of southern New York State (Nassau, Suffolk, and Westchester). The local retains control not only over metallic lathing and furring ("inside" work), but also over concrete reinforcement ("outside" work). Inside work can be done only by union members, but outside work, normally performed by ironworkers, can be done either by union members or permit men. Permit men are not considered union members and undergo no apprenticeship program, but are allowed to work during peak demand periods. Between 1968 and 1970 the membership of Local 46 (including journeymen and apprentices) varied between 1,450 and 1,500. In 1970 there were approximately 2,000 permit workers.

In 1967 a black journeyman lather from Florida was denied the opportunity to transfer into Local 46. At the request of the NAACP, the Department of Justice initiated an investigation of Local 46's employment practices. The investigation substantiated the complaint and discovered further evidence of discrimination. As a result, the U. S. Attorney for the southern district of New York, in May 1968, filed a Title VII suit against Lathers Local 46 and their Joint Apprenticeship Training Committee (JATC). The government's complaint alleged that there existed a pattern and practice of resistance to nonwhite employment. The government charged that:[13]

(a) Lathers Local 46 was engaged in patterns and practices the purpose and effect of which were to exclude blacks from the union and to replace non-union black lathers with white members and other white persons. The government noted that only four of the union's approximately 1,450 members were nonwhite and that, although members and other whites were routinely issued permits, no blacks were issued permits until 1966. At the time of the suit there were approximately 45 black permit holders.

(b) Lathers Local 46 had adopted and was implementing a policy which prevented the transfer of black journeymen lathers into the union.

(c) Lathers Local 46 was affording job referral opportunities to members and other whites not provided to blacks with equivalent qualifications. A rule requiring any individual seeking lathing work to "shape" the hiring hall was not enforced in the case of the nearly all-white union members. Further, permit holders were sometimes referred on the basis of race and nepotism rather than on the ability to perform the required work.

(d) The JATC was discriminating on the basis of race in admissions to the apprenticeship program.

(e) Both Lathers Local 46 and JATC had failed to eliminate the effects of past discriminatory behavior.

After a year and one-half of pleading and motions, and on the eve of the trial (February 1970), the parties entered into a consent decree. Generally, the agreement enjoined Local 46 and the JATC from further discriminatory behavior. There were, however, several important specific elements in the decree.

First, the decree called for a restructuring of the local's referral practices. Only experience in the trade could be used as a basis for preference and then only if it related to the ability of workers to perform the required work. The union was to present detailed rules and procedures to implement these provisions within six months of time the agreement became effective.

Second, the union was required to file monthly reports on the racial composition of its membership and permit holders and on the regular hours and overtime worked by each category of workers.

Third, the agreement called for the appointment of an administrator who would mediate disputes between the parties and implement the necessary administrative machinery. The administrator was also to seek agreement between the parties on a set of rules which would implement the equal employment opportunities guaranteed elsewhere in the agreement. With the concurrence of both parties, George Moskowitz, a veteran labor attorney and arbitrator, was named the administrator.

Nine months after the consent decree was signed (November 1970) the U. S. Attorney, dissatisfied with progress toward implementation of the agreement, asked that Local 46 and the JATC be found in contempt of court. The government charged that the parties had failed, within the required six month period, to significantly begin to correct its discriminatory practices. It was alleged that the union had failed to inform those working under its jurisdiction of the new rules for the operation of the hiring hall and that in fact the rule requiring those seeking work to "shape" the hall was strictly enforced only in the case of nonwhites. The government further contended that the union was continuing its practice of discrimination in work and overtime assignments. The statistics reported in Table 10 were offered as evidence. It was argued that the earnings differentials were more than could be accounted for by experience differences. In May 1971 the Court found Lathers Local 46 and the JATC in contempt.

The most important actions of the court at this time were to strengthen the role of the administrator and to

Table 10

Employment and Pay Statistics for Local 46 March to July 1970

Classification	Average Earnings for Those Who Worked
A. Local 46	
White	$3,855
Nonwhite	3,016
B. Permit Holders	
White	2,210
Nonwhite	1,989

SOURCE: Government Post-trial Brief, 68 Civ. 2116.

award backpay to those individuals who had been discriminated against since the original order. The administrator was allowed to implement a computerized records system to keep track of union membership and permits issued and of the number of hours worked in each category. Moskowitz also required that the JATC immediately inaugurate a nonwhite class of 25 members and that the Local give out 250 permits per year, 125 of which must be given to nonwhites. Two New York City outreach organizations, the Recruitment and Training Program (RTP) and Harlem Fight Back, were given the primary responsibility for providing qualified applicants. These events caused considerable resentment on the part of the union membership which in turn produced a hardening of attitudes among union officials.

As of July 1974, two groups of 125 nonwhites had been given permits. About 20 percent of the union's permit holders were thus nonwhite (the New York SMSA is 23.4 percent nonwhite). The class of 25 nonwhite apprentices admitted in 1971 (all of whom remain in the local) was the last apprenticeship class begun. The union membership (including apprentices) is thus about 2.0 percent nonwhite. The record system however indicates, for both union members and permit holders, that whites and nonwhites of the same skill level are now working approximately the same number of hours. This is true despite an overall decline in the number of hours worked due to a drop in construction activity during 1973. (See Table 11.)

What has the overall impact of the Lather's case been on equal employment opportunity in the New York City building trades? The suit must be assessed in relation to the total effort to desegregate the building trades beginning in the early 1960's. The situation in 1962 has been described as follows:

> (In 1962) ... there were no black journeymen or apprentices in the elevator constructors, iron workers, metal lathers, sheet metal workers and steamfitters trades in the New York City building and construction industry. There were a few in the electricians, operating engineers, and plumbers. This pattern prevailed throughout the the country.
>
> Black workers are well represented in the so-called trowel-trades of the building and construction industry. They have constituted roughly 26 percent of construction laborers, 27 percent of the cement and concrete finishers, 16 percent of the plasterers, and about 12 percent of the nation's bricklayers. The pay is good -- anywhere from $4.00 to $5.00.

Table 11

Construction Volume in Jurisdiction of Local 46, 1967-1973 (thousands of dollars)

1967	$1,480,457
1968	1,829,186
1969	1,692,587
1970	1,854,470
1971	2,133,067
1972	2,356,098
1973	2,002,350

SOURCE: New York Division of Housing and Community Renewals (based on building permits issued, also includes Rockland County).

an hour for these are union jobs and require a high order of skills. But the work is dependent upon the weather and lacks status for it is uncertain, dirty and hard. Moreover, since the building industry is organized by crafts, there is virtually no way for a laborer, say to work his way into the cleaner, better paid and steadier mechanical crafts -- electricians, plumbers, steamfitters, ironworkers and sheet metal workers. Within these apprenticeable skilled trades, fathers passed their jobs on to their sons or nephews, excluding almost all outsiders. Roughly 4.5 percent of all the new workers entering these five crafts over the decade 1950 to 1960 were blacks. Yet, the percentage of all the workers within those crafts who are black changed only slightly, rising from 1.9 percent to 2.4 percent in ten years.[14]

Aside from the Lather's case, desegregation pressure on the building trades has come primarily from three areas:

(1) Outreach Programs. Frustration in the black community over the poor representation of blacks in construction jobs, particularly when the jobs were in black neighborhoods, surfaced in 1963 in the form of numerous construction site shutdowns. This resulted in the establishment of a number of minority-based outreach organizations which searched the minority community for both qualified apprenticeship applicants and skilled individuals who might qualify for advance journeyman placement.

Most of these New York agencies have been short-lived and have enjoyed only meager success. The most successful program has been that of RTP, founded by the Workers Defense League in 1963 and currently funded by the Department of Labor. RTP has been able to maintain credibility in the minority communities and at the same time enlist the support of the powerful leaders of the New York Building Trades Council (for example, the ex-secretary of the Council Peter Brennan, formerly U. S. Secretary of Labor). They have used this leverage in New York City over the past ten years to enroll over 2,500 youths in apprenticeship programs and place over 800 individuals as journeymen or trainees.

(2) Contract Compliance Efforts. The City of New York has been extremely active in the area of contract compliance. In conjunction with state and federal efforts, the net

result has been a high level of pressure for minority employment, at least on government jobs. It is illustrative that in July 1974 New York City sued the Department of Labor over the Department's approval of a hometown plan with minority bid specifications lower than the New York City ordinance. The case was decided in December 1974 for New York City.

(3) Other Title VII Litigation. Three other Title VII lawsuits beside the Lather's case, have been filed by the Department of Justice against New York City labor unions (U. S. v. Steamfitters 638, U. S. v. Sheet Metal Workers 28, and U. S. v. Operating Engineers 15). Although space precludes an individual discussion of these cases here, the successfully prosecuted cases (the Steamfitters and the Sheet Metal workers; the Operating Engineers case is not yet settled) must be considered to have an impact on building trades employment at least equal to the Lather's case (and perhaps larger since each of these unions has a larger membership).

The above efforts have brought about some gains in minority employment in the New York City construction trades. Table 12 reports the number of minority journeymen for both the general and mechanical trades in the early 1970's. Even considering that these data do not include recent minority gains in apprenticeship programs, it can be seen that further efforts toward equal employment opportunity are necessary, especially in the mechanical trades. This is particularly clear when the figures in Table 9 are considered relative to the fact that the population of New York City is 23.4 percent nonwhite.

In summary, the Local 46 case has been but one of a number of important and complex factors which have initiated the modest gains which have been made with respect to minority employment in the New York City building trades. The demonstrable impact of the suit can be seen in the meager gains inside Local 46 itself. With respect to other unions, the demonstration effect that the government is willing to file contempt charges when unions ignore court orders and award backpay when it is deemed necessary is no doubt positive but difficult to assess accurately.

Table 12

Minority Representation in New York City Construction Trades (Years Individual Unions Were Surveyed Vary From 1969-1973)

Trades	Total Journeymen	Minority Journeymen	Percent Minorities
General Construction Trades	54,194	11,086	20.5
Laborers Only	5,800	1,425	24.6
Mechanical Trades	24,990	1,387	5.6
TOTAL	79,184	12,473	15.8

Note: Mechanical trades include boilermakers, electricians, elevator constructors, ironworkers, plumbers, steamfitters, and sheet metal workers.

Source: New York City Office of Contract Compliance.

Conclusions

The evidence from the five examples of Title VII litigation in the construction industry discussed above, indicates that enforcement of Title VII (or some close substitute such as contractor compliance) is a necessary but not sufficient condition for promoting equal employment opportunity in the building trades. Moreover, the evidence indicates that legal sanctions have been invoked only after pressure for them has arisen from an aggrieved minority organization. It seems unlikely that any of the progress which has been made toward desegregation in the above cases would have occurred because of voluntary action alone. Civil rights activism and consequent legal sanctions are necessary to get the attention of each of those who would discriminate in the construction industry.

From the time a violation is found one must, however, be careful not to overrate the positive impact of legal proceedings. The error could be made of assuming that all progress toward desegregation of the construction industry since the passage of the 1964 Civil Rights Act is due to Title VII. But other factors may have intervened independently.

Legal proceedings are a slow, resource-consuming process. Table 13 indicates the severity of this problem. The table reports the time elapsed from when the original complaint was filed until various stages in the legal process were reached. For example, the average time between the initial complaint and the District Court decision (or in the case of U. S. v. Lathers 46 the consent decree) was at least one year and four months. Table 13 also provides some rough estimates of the resource costs of this type of litigation. The U. S. v. Local 86 alone required almost 6,000 lawyer hours.

Each of the cases discussed above is so unique that many of the principles established in a particular case may not be of general applicability. It is consequently difficult to avoid fighting segregation on a case by case basis. Such a strategy is very expensive. In addition, civil rights law is better suited to combatting overt discrimination than changing the institutionalized patterns which permeate the construction industry. While attacking overt discrimination may eventually change insitutionalized patterns, legal sanctions have the potential for causing a hardening of racial barriers and therefore actually slowing change, as the Lathers Local 46 case in New York City well illustrates.

Table 13

Time and Resource Costs of Litigation

Case	Title VII Complaint Filed	First Decision (Time Elapsed)	Appelate Decision (Time Elapsed	Latest Supplemental Action - Type	Estimated Lawyer Years - DOJ	Other Costs DOJ	Estimated Lawyer Years - Union(s)	Other Costs Union(s)
U.S. v. Sheet Metal Workers Local 36 St. Louis	2-66	3-68 (2 Yrs., 1 Mo.)	9-69 (3 Yrs., 7 Mos.)	None			3/4	
Local 53 v. Vogler New Olreans	12-66	1-68 (1 Yr., 1 Mo.)	1-69 (2 Yrs., 1 Mo.)	None				
Dobbins v. Local 212 Cincinnati	7-67	9-68 (1 Yr., 2 Mos.)	None	Court Order 10-68				
U.S. v. Lathers 46 New York	5-68	2-70 (1 Yr., 9 Mos.)	None	Refusal to Stay Contempt Order 3-72	3	Research Analysts	2-1/2	$135,000 backpay & maintenance of computer system
U.S. v. Local 86	11-69	6-70 (7 Mos.)	2-71 (1 Yr., 3 Mos.)	Consent Order 3-75	4	Research Analysts per diem for DOJ lawyers in Seattle	3	

Source: Interviews with Department of Justice (DOJ), and defense (union) attorneys. All the estimates were approximate as Department of Justice does not keep time logs and union attorneys would not reveal time logs. All individuals were asked to include time spent on related proceedings.

In order to increase minority participation in the construction industry we recommend that the Department of Labor:

(1) Strengthen the outreach concept and make it applicable to journeymen as well as apprentices. We have very little evidence that there are many qualified minority journeymen who are denied access to construction employment, but there is no better way to find this out than through outreach programs. In our judgment, the outreach concept was one of the most effective developments that came out of the efforts to get blacks in the construction industry during the 1960s; outreach programs were conspicious in producing results where other activities failed.

(2) Minority workers who almost meet union journeymen standards could be upgraded through special training programs. A program might be adopted to identify minority contractors who, with a little training and technical assistance could meet industry standards. Although it would be unwise to expect significant impact on construction labor supplies from upgrading the few existing minority contractors, these contractors are organized and could provide skilled craftsmen.[15]

(3) Attention should be given to developing written objective procedures to determing minimum standards for journeyman status in the building trades. We have no evidence that current standards and procedures are unreasonable, but tripartite review panels (composed of representatives of employers, unions and the general public) migh be established to review specific standards and provide appeals procedures for minorities who feel unfairly treated by local unions or employers. It is difficult to resolve the question of whether there are many qualified minority journeymen unless objective standards are established and subject to review.

(4) Rather than the hometown and imposed plans, which rarely seem to be very effective, national agreements should be worked out to provide industry-wide mechanisms for recruiting, training and placing minorities in the construction industry. Plans which attach workers to jobs rather than the labor market are not likely to be very effective because the concept of a job in the construction industry is much less meaningful than in an industrial plant. Although there are problems of representation by the parties at the national level, these problems are nowhere near as intense as local agreements. Moreover local agreements rarely coincide with labor markets and usually relate only to federal or unionized

construction industries. National agreements could specify the mechanisms for admitting minorities, while specific details could be worked out at the local level. National agreements would also add the moral authority of national labor and employer associations and would relieve some of the political pressures on local union officials, who are most vulnerable to attack for racial reasons. The guidelines for national agreements might include:

(a) Agreements should be adopted for unionized and nonunion branches of the industry.

(b) Adoption of outreach programs to recruit and train minority apprentices and journeymen.

(c) Parties to the agreements should include representatives of minorities, workers, employers, and the United States Department of Labor (Office of Federal Contract Compliance).

(5) The matter of goals and timetables is troublesome and creates the feeling by whites that quotas are being required, despite protestations that goals do not equal quotas and merely require "good faith" efforts. However, unions and contractors are understandably nervous about charges of "preferential treatment" of blacks and fear a weakening of standards. It is our view that outreach programs will eventually make imposed goals and timetables unnecessary. We have noted that the goals assigned outreach programs usually are considered minimum targets while those in the imposed and hometown plans are considered maxima.

CHAPTER 3

COMBATTING EMPLOYMENT DISCRIMINATION IN HIRING, UPGRADING AND SENIORITY THROUGH CONTRACT COMPLIANCE: THE CASE OF SHIPBUILDING

Shipbuilding, with the exception of the experiments with the modular method of construction made popular in Japan, remains even in the twentieth century a labor-intensive, craft-oriented industry. 1/ Work is geared to orders in both shipbuilding and ship repair, which means that the number of persons employed fluctuates with the volume of business. Some yards have sought to diversify their offerings so that they can provide steady work for their employees. 2/ These efforts, however, have not changed the labor intensiveness of the industry.

The five cases in this study focus on coastal shipbuilding and repair (SIC code 373). Authority for assuring compliance with equal employment opportunity provisions under Executive Order 11246 rests with the Office of Civil Rights in the Maritime Administration of the U.S. Department of Commerce.

On-site interviews with personnel bring out two outstanding characteristics of the large shipyards. For one, the yards conduct an impressive amount of training in shipbuilding crafts. A large shipyard is a training institution. Second, every personnel official complains about the high rate of voluntary terminations. Hence, shipyards spend an enormous amount of their resources training people knowing that many of them will leave the industry. However frustrating this must be for the managements of the various yards, we should note that shipyards perform a social (training) role in this regard.

A major reason for the high exit rate, voluntary terminations, or turnover, is the kind of working conditions that exist when ships are built. The job description for a ship's painter, drawn up by a major shipbuilder, includes in its working conditions extremes of cold and heat plus temperature changes, wet and humid conditions, noise and vibration, electrical, mechanical or explosive hazards, and fumes and odors resulting from toxic conditions, dust, or poor ventilation. 3/

Finally, U.S. shipbuilding is clearly dependent on the federal government, particularly the Department of Defense (DOD), for new hardware and repair orders, and the Maritime Administration for subsidies for the construction of commercial ships.

The heavy reliance of shipyards on government support is reflected in industry statistics. As shown in Table 14 83.1 percent of the industry's contracts for new ships or major ship conversions over the eleven-year period between July 1, 1964 and June 30, 1974 can be attributed to public funding. Naval contracts alone accounted for more than a majority of the work. The Maritime Administration reported that as of January 1, 1975, there were 63 naval vessels under construction or on order.

The five cases chosen for this study fall into a growth and decline pattern. Three of the yards have been growth yards in most of the years under study, although one of them had to recover from a sharp loss in business associated with sanctions imposed on it by the U.S. Department of Commerce (DOC). The two West Coast yards have experienced sharp declines in the number of employees. This contrast allows us to put into sharp relief the impact the growth in employment has had on EEO compliance. Our growth yards include Alabama Dry Dock and Shipbuilding Company, Newport News Shipbuilding and Dry Dock company, and Ingalls Shipbuilding Division of Litton Industries. The two yards that experienced a sharp loss of orders are the Lockheed and Todd yards in Seattle.

The Office of Civil Rights in the Maritime Administration

The Maritime Administration has its headquarters in Washington, D.C. and has regional offices in New York, New Orleans, and San Francisco. There are subregional offices in Seattle and Long Beach. 4/ The total staff of the Office of Civil Rights (OCR) comprises some 40 persons (see Table 15.)

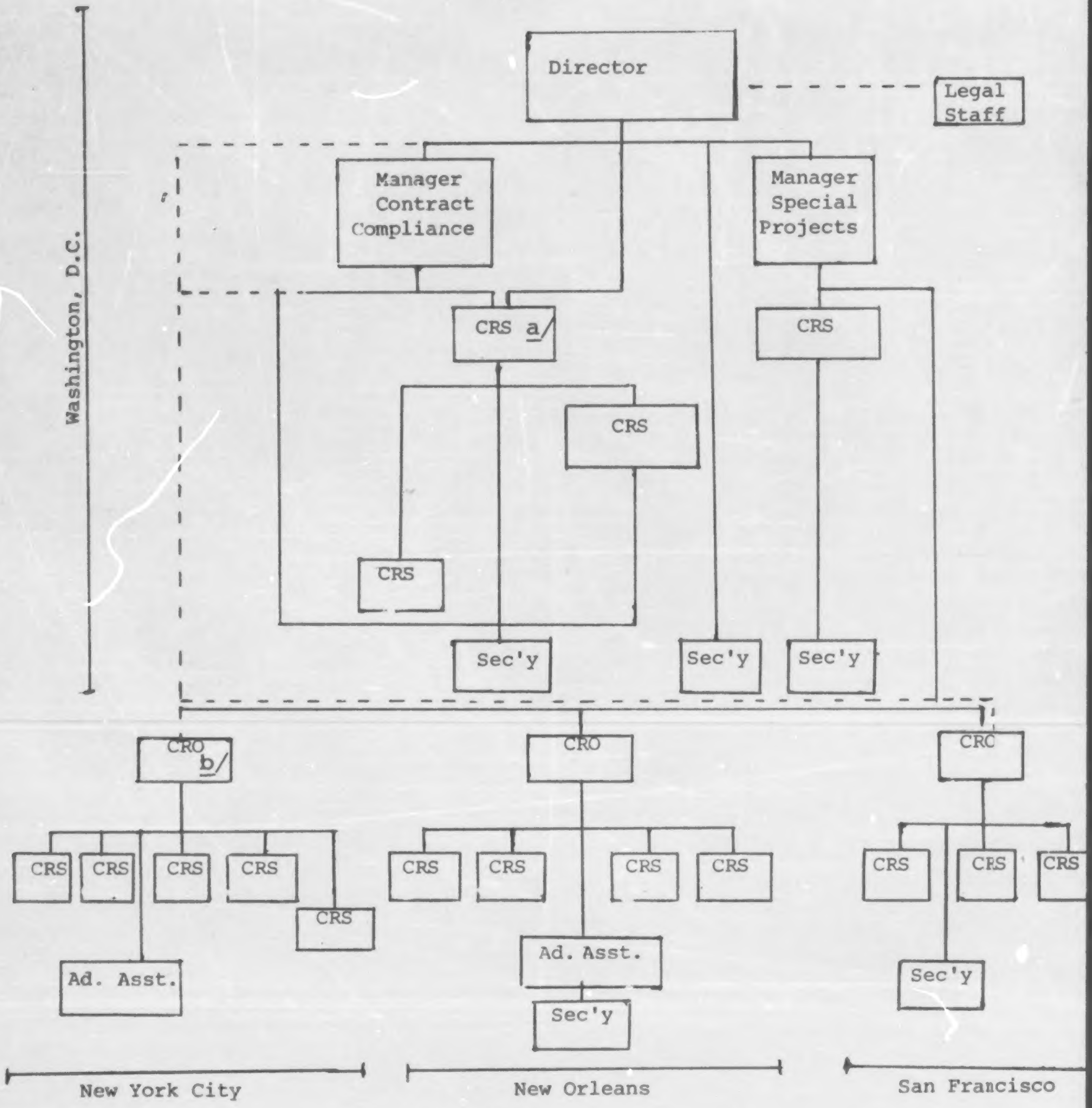
Table 14

U.S. Shipbuilding: Value of Contract Awards Including Major Ship Conversions - By Category of Funding, 1964-1974

		Percentage Shares			
Fiscal Year	Total Value (millions of $)	Navy	Maritime Administration (Subsidized)	Total Public Subsidized	Private Subsidized
1964	795.8	73.0	19.1	92.6	7.4
1965	1048.5	75.6	16.1	91.7	8.3
1966	769.8	60.0	35.2	95.2	4.8
1967	681.8	72.1	5.4	77.5	22.5
1968	1193.7	52.8	25.9	78.7	21.3
1969	652.9	25.1	40.3	65.4	34.6
1970	1206.8	73.4	9.0	82.4	17.6
1971	1213.3	63.8	29.1	92.9	7.1
1972	2286.9	52.0	34.8	86.8	13.2
1973	1733.1	21.4	72.7	94.1	5.9
1974	3986.0	53.0	19.0	72.0	28.1
Total, 1964-1974 ($)	15568.6	8454.4	4476.4	12930.8	2637.8
Percent	100.0	54.3	28.8	83.1	16.9

Source: Maritime Administration
Note: Percentages may not add to 100.0 because of rounding.

Organizational Structure of Office of Civil Rights, Maritime Administration


Washington, D.C.
Director
Legal Staff
Manager Contract Compliance
Manager Special Projects
CRS a/
CRS
CRS
CRS
Sec'y
Sec'y
Sec'y
CRO b/
CRO
CRC
CRS
CRS
CRS
CRS
CRS
Ad. Asst.
CRS
CRS
CRS
CRS
Ad. Asst.
Sec'y
CRS
CRS
CRS
Sec'y
New York City
New Orleans
San Francisco

SOURCE: Lester Rubin, Measures of Effectiveness of the Office of Civil Rights U.S. Maritime Administration (Philadelphia: University of Pennsylvania, 1973), p. 41.

a/ CRS = Civil Rights Specialist, since renamed Equal Opportunity Specialist (EOS).

b/ CRO = Civil Rights Officer

____________________ Direct Lines of Communication and Authority.

-------------------- Lines of Technical Assistance and Direction.

Under Order 4, issued to implement Executive Order 11246, government contractors were required to prepare detailed affirmative action plans containing goals and timetables. When EO 11246 was amended by EO 11375, which added consideration of females to prohibitions based on race, color, and national origin, Order 4 was revised to include sex also. Hence, the operative authority for implementation has been Order 4 and Revised Order 4. The work of the OCR is conducted through the medium of two basic documents: affirmative action plans and compliance review reports. Affirmative action plans (AAP) show job holding patterns in great detail, with separate reporting by sex and four minority groups: blacks, Spanish-surnamed Americans (SSA), Orientals or American Asians, and American Indians. The AAP contain goals and timetables for each sex and for each minority group for each year. That is, AAP are filed yearly, but occasionally the OCR negotiates changes in original AAP in the form of amended AAP. The compliance review reports are conducted periodically. The rules for periodic reviews are somewhat flexible, part of that flexibility reflecting the low staffing levels of the office. In general, the attempt is made to review each of the 30 large yards, which have about 80 percent of the total employment of the industry, every six months. The smaller yards (about 60 of them) are scheduled for annual reviews, but not all of these take place. When a yard, large or small, gets its house in order, the frequency of compliance reviews is reduced.

Compliance reviews are conducted by two different methods: the first is a desk audit and the second is an on-site review. Desk audits and on-site reviews are preceded by considerable amounts of statistical material filed by the contractors, which is reviewed by the compliance officer, the latter working under the title of equal opportunity specialist (EOS). The regional staffers do the desk audits and on-site reviews, but their work must be approved by the senior compliance officer working in the Washington headquarters. Briefly, the compliance procedure (1) reviews and approves AAP, and (2) ensures through the continuing surveillance of audits and reviews that the approved AAP are implemented. 5/ The compliance effort of the OCR is an example of a continuous relationship rather than an episodic one such as that between the Equal Employment Opportunity Commission (EEOC) and respondents.

This study is concerned with the period since 1968 when the Office of Civil Rights was established in the Maritime Administration. Interest centers on the use of out-of-court settlements as a means of achieving compliance with Executive Order 11246 as amended. This procedure has been examined before by Rubin, but by use of an entirely different technique. 6/ A perspective on the historical role played by blacks in shipbuilding is contained in another work by Rubin. 7/

II. THE NEWPORT NEWS STORY

The Newport News Shipbuilding and Dry Dock Company dates back to 1886 when it was built by the Huntington family. Family control lasted until 1927, when it was replaced by a New York-based investor group. In 1968, the yard was absorbed by a conglomerate, Tenneco, Inc.

Blacks have always been employed in the yard, but the pattern of job holding did not quite fit the traditional Southern black/white job dichotomy. Segregation by job assignment was a fact of life in the yard until very recently. Segregation, however, did not mean that blacks could not achieve first-class mechanic status. To be sure, this status was achieved in the less desirable departments, and it was also true that supervisory jobs were restricted to whites with few exceptions, and most of these exceptions came late in the history of the yard.

From the beginning, the Huntington family made a commitment to hire blacks commensurate with their percentage in the labor force in the Newport News area. The family was so concerned about this tradition that the contract of sale in 1927 carried with it the unusual provision that the new owners maintain a level of black employment similar to or above that of black participation in the local labor market. Further, the yard, even though much influenced by the pattern of race relations in southern Virginia, continued to produce black first-class mechanics.

At least two observers of the yard noticed the effect of this kind of placement. Northrup, in his 1944 review of the impact of unions on black employment opportunities, observed that:

> The Newport News Company has employed large numbers of Negroes since it commenced operations in 1886. In November 1942, its 8,200 Negro employees comprised 27.4 percent of its total working force. Although Negroes are employed in many skilled capacities, they are, for the most part, denied employment as electricians, machinists, and welders. Moreover, Negroes are not admitted to the company's apprentice training school. [8]

Following the much-touted conciliation agreement made at the yard by the combined forces of the federal government in 1966, Blumrosen, a member of the EEO Commission, noted:

> In 1965 there were at least 400 Negro employees who were in the top group of job classifications called mechanic. This meant that there was a reservoir of trained skilled manpower from which supervisory employees could be identified. In most Southern plants three years ago it would have been impossible to find a substantial number of Negroes who had been promoted to first class mechanic status. 9/

The pride of the Newport News yard is its apprentice school. This company-run vocational education school combines academic and on-the-job training for would-be shipbuilders for a four-year schooling program. Students who wish to become designers continue in training for a fifth year. Consistent with the patterns of exclusion found throughout industry in this country in the past, blacks were simply not allowed entry into the apprentice school. The color bar was not broken until 1956. Since that time things have changed, but largely under threat of federal government interference. In December 1973, 14.4 percent of the apprentices then enrolled were black.

A similar pattern of exclusion existed in the clerical occupations outside of the production and maintenance operations. The first black clerical, a secretary, was hired in 1956. In January 1974, 32.7 percent of the office help at the yard was black.

The Actors and the Environment: A Southern Setting

The Newport News story is really a two-act play. Some new actors appear in the second act, others drop out, and still others have their roles modified. The first agreement was concluded on March 30, 1966 and the second was consummated on June 12, 1970.

The corporate managers and some of the personnel officials at the time of the 1966 agreement were replaced by Tenneco functionaries before the bargaining that led to the June 1970 settlement. The union is the independent Peninsula Shipbuilders Association, a union that grew out of the old Bethlehem Plan. The union officialdom was unchanged, but between the two acts, two of their number were incarcerated in the county jail for defying a court order during the only strike in the history of the yard. In the 1966 case the government team was led by the EEOC with the assistance of representatives of the departments of Justice, Defense and Labor. In the second case the government team was led by the Office of Civil Rights in the Maritime Administration of the Department of Commerce with assistance from the Department of Labor. The local National Association for the Advancement of Colored People (NAACP), whose president was an employee of the yard and a charging party in an early EEOC case, was involved in the first case and received assistance from the NAACP Legal Defense Fund. There was no formal organized resistance to government efforts among white workers at the yard. And surprisingly, for a case of this size, there was not a large amount of outside legal assistance.

Newport News lies at the end of a peninsula that is bordered on one side by the James River and on the other by the Hampton Roads portion of Chesapeake Bay. The shipyard has long been the dominant employer and influence in the town. The leadership in the yard, from the Huntington family through the investor group that held the facility through 1968, considered Newport News to be "its town." Or to put it another way, running the town came along with running the yard. No one ever needed to be reminded that "What is good for Newport News Dry Dock and Shipbuilding Company is good for Newport News." The present Tenneco management team represents a break from the paternalistic patterns of the past.

Race relations, until quite recently, have been rigidly segregationist in the town and in the yard. So much so that when restroom facilities were integrated at the yard prior to a launching ceremony that had the late President Eisenhower as the honored guest, it was done in violation of Virginia Law. It was only in the mid-1960s that this part of Virginia began to comply with the 1954 Supreme Court decision concerning school segregation.

This small southern town, with its tradition of well-defined racial roles, has a strong streak of religiosity (of the Protestant, largely Baptist version) running through its daily existence. Also, since World War I days, but with more intensity beginning with World War II, there has been a heavy concentration of federal military bases, largely Navy, in the area. This had done little to alter the traditionally conservative view of the world that springs from the James River peninsula.

Rates of unemployment for the Newport News-Hampton area are shown in Tables 16 and 17. These calculations are made on a place of residence basis, and the area covered was expanded beginning in 1970. The relevant observation is that for most of the years studied in this case, the rate of unemployment was below 3 percent. Also, the local rate was below the national rate in every year.

The volume of employment at the shipyard increased every year from 1966 except for the change from 1973 to 1974. Hence, the yard was drawing new employees from a tight labor market throughout the entire period. Further, the yard was offering work to potential shipbuilders, and as has been indicated elsewhere, this kind of work produces relatively high termination rates.

The Office of Civil Rights in the Maritime Administration and the personnel officials at the yard have agreed that the appropriate labor market for the facility is the Standard Metropolitan Statistical Area (SMSA) that embraces Newport News-Hampton and York County. In 1960 the black population of this SMSA was about 28 percent, and the 1970 census indicates that this percentage slipped to about 26 percent.

The Blumrosen Agreement -
March 30, 1966

The Equal Employment Opportunity Commission began to function on July 2, 1965. On March 30, 1966 the Commission, with the assistance of the departments of Defense, Labor and

Table 16

Rate of Unemployment by Year
Place of Residence Basis
Newport News - Hampton Area
1965-1969

Year	Rate of Unemployment Percent
1965	2.6
1966	2.5
1967	2.7
1968	2.6
1969	2.8

Source: Revised Labor Force Components, Newport News-Hampton Area, 1965-1969, supplied by Virginia Employment Commission

Table 17

Rate of Unemployment by Year
Place of Residence Basis
Newport News-Hampton Metropolitan Area
1970-1973

Year	Rate of Unemployment Percent
1970	4.0
1971	3.2
1972	2.8
1973	2.8

Source: Labor Market Trends for the years indicated. Published by the Virginia Employment Commission.

Justice, concluded a major conciliation agreement with the Newport News Shipbuilding and Dry Dock Company that is the subject of some controversy, and at times the controversy has slipped into acrimony.[10] The settlement has gone into the record as a conciliation agreement, but it was extracted by use of the Office of Federal Contract Compliance's (OFCC) power to withhold funds. Hence, the official title of conciliation, which is used throughout this chapter, is something of a euphemism. A 1970 review of the conciliation agreement[11] suggested that the agreement was being reconsidered by the Office of Civil Rights in the Maritime Administration. This proved to be an accurate observation. What has come to be known as the Blumrosen agreement, after the then-chief negotiator for EEOC raises so many questions about the federal government's compliance efforts that it should be reviewed from the vantage point of eight years later.

At least three facts combined to give the Blumrosen agreement landmark status. First, it was the initial instance in which the combined forces of EEOC, and the departments of Justice, Defense, and Labor were brought together in a civil rights case affecting employment. Second, the yard was the first major government contractor charged under Title VII of the 1964 Civil Rights Act. Third, the case attacked the personnel system at the yard in addition to handling a number of individual cases that had been brought against the facility. This combination made big news, and certainly was an employee morale booster for the fledgling EEOC.

A number of things were accomplished quickly and easily in the Newport News case. Segregated facilities were eliminated. The yard agreed to actively recruit blacks for jobs at all levels. The apprentice school, the pride of the yard, was attacked on a number of points. The selection committee, all white, was integrated by bringing aboard a black supervisor from the paint department. The age limits for entry were changed from 18-20 to 18-25. The rule against marriage, either at entry or during the program, was dropped. The use of College Board scores as a screening device for entry was eliminated. The selection board was ordered to notify every yard employee in the appropriate age category that applications would be accepted from them. In order to facilitate this, the yard also dropped its rule against taking applicants who had previous college training. The yard also agreed to actively recruit young blacks from area high schools for entrance into the apprentice school. There also was a problem with the selection for training courses other than the widely known apprentice school. The yard is a training institution, and the charge was made that because of their race, blacks were denied entrance into certain courses. This was rectified by specifying that such blacks would be placed on rosters and would have an opportunity at the next slot that opened up. This was the first instance found in this study of the doctrine of "rightful place."

The rest of the agreement was more complex and generated some controversy. The EEOC charges against the yard required extensive examination of personnel records. Everyone agreed that this would be time consuming and require some expertise. Hence, the agreement called for an outside expert to be hired by the yard, at the agreement of both parties, who would do the statistical work. The charges took three forms: 12/

(1) Wages of Negro employees doing the same work as white employees were lower than those of the white employees;

(2) Negro employees were promoted at a slower rate than white employees; and

(3) Negro employees were not promoted to supervisory status under the same circumstances as white employees.

The outside expert selected was a management consulting group, Case and Company. The work began on the three issues listed above. There was not much substance to the charge that blacks were performing the same work as whites without receiving equal pay - with some thorny exceptions. No cases were found where blacks and whites were performing under the same job title and receiving different wages. This would, of course, have been a violation of the collective bargaining agreement in addition to a Title VII violation. Since no cases were found, the analysis moved to the issue of classification procedures that produced the same effect. This is a highly technical issue, as the court cases filed under the Equal Pay Act will attest, and the reader will be spared much of the detail. A single example should suffice: maids and porters often have similar duties but the two titles receive different wages. The practices at Newport News were more complicated than this example, but Case and Company found a few of them. The company agreed to reclassify the jobs, which meant higher positions and concomitantly higher pay. No backpay was awarded, either here or at any other place in the agreement.

A difficult, if not impossible, issue to resolve was the accuracy and magnitude of the charge that "Negro employees were promoted at a slower rate than white employees. . ." This issue did not involve supervisory positions, but it did include all of those classifications that fell below the first-line supervisor. Company officials to this day argue that the charge was not proven. Case and Company officials will not talk to "outsiders." EEOC claimed that this portion of the agreement resulted in 3,980 promotions for blacks. The union, the Peninsula Shipbuilders Association, argues the number was 155. A 1970 summary of the case 13/ identified more than 155 promotions, but although the exact number could not be determined, it was not close to 3,980. Promotions through the classes and from title to title occur very frequently at the yard. In some lines, an employee may move from one step to another in just a few months. Hence, with roughly 5,000 black employees it was not hard to imagine that there were 3,980 promotions for blacks in the year following the agreement. However, it is quite another thing to attribute all of the movement to the agreement. It should also be emphasized that there is no inconsistency between the company arguing that there was no evidence to prove the charge and the union and a researcher indicating that at least 155 promotions occurred. Corporate officials will make changes under pressures like those brought to bear in this case while stoutly maintaining they have been falsely charged.

Promotions to first-line supervisor produced some real learning experiences for all students of fair employment enforcement. The agreement sought to correct past discrimination against blacks at the supervisory level. A profile of the last 100 white employees who were promoted to supervisor was compared with the qualifications of selected blacks. However, this method was abandoned, with the explanation given by Blumrosen that it was soon discovered that the qualifications for supervisor were so varied that the composite or profile was not a meaningful yardstick. There can be no doubt respecting this finding. However, a competing explanation offered by some of the older personnel officials at the yard is that not one single black met the profile. However distressing, this should not be a surprising discovery. If an employer sets out to make sure that no one in a particular group is going to do supervisory work, it is highly likely that members of that group will not gain the kinds of experiences that lead to supervisory responsibility. Hence, when a point-in-time study is called for, as was the case in the Blumrosen agreement, it will follow that the group discriminated against will not have the qualifications. After all, it was company policy that blacks would not have that kind of experience.

In any event, a new program was worked out one year after the initial agreement was made. In the new approach, a profile was drawn of the last five whites who were promoted into supervisory status by department. Then blacks within the department were compared with that profile, ranked, and given a spot on a preferential list. This has not worked well. Some twenty blacks were promoted before the new agreement was signed on March 31, 1967, a full year after the initial conciliation agreement was inked. This preferential list for promotion to quarterman had about 70 names on it. In March 1974 some 46 names were still on the list. One reason was that in small departments there has been very little turnover at the supervisory level. Beyond that, there is a suggestion that the personnel people have promoted other blacks around those on the list. In any event, this part of the agreement was, in effect, an object lesson in how not to negotiate a promotion plank in a discrimination case.

The original impetus for the case was a set of charges filed with EEOC. By the time the parties reached agreement, charges had been filed by 41 persons. All of these charges were resolved within 90 days of the March 30, 1966 signing.

It is rather difficult to conclude with a brief assessment of the Blumrosen agreement. First of all, the art of bringing together so many government agencies who then act in concert must be viewed as a first-rate achievement. Second, the agreement was an attempt to break up a pattern of personnel operations that literally had its roots in the 1880s. The result as Blumrosen himself put it, "was to shatter the old system." Certainly this has to be the major achievement of the agreement, for it meant to the black community in the area that "somebody out there cares about us." No amount of criticism of the details of the agreement will change the fact that blacks could see outsiders attempting to do something about their condition.

As pointed out earlier, a number of things were accomplished quickly and easily and they will not be repeated here. The company was not laggard in applying the agreement and no review by EEOC suggested that the yard did not live up to the agreement. Several of the issues dealt with in the agreement continued to rise in charges filed by blacks with the EEOC and reported to compliance officials in the Office of Civil Rights in the Maritime Administration. An on-site review made in late 1969 indicated decisively that the yard required extensive changes to effect compliance. In that sense, the Blumrosen agreement fell short of its goal. The Newport News yard was destined to go through the wrenching process of hard bargaining with federal officials about its EEO stance a second time. This requires a review of the June 12, 1970 agreement.

The June 12, 1970 Agreement

Employment discrimination did not go away in the wake of the Blumrosen agreement. The big settlement, and the one that allowed -- or perhaps compelled -- the yard to turn the corner, came on June 12, 1970. Two organizational changes preceded this agreement.

In a 1968 reorganization of the OFCC efforts, the DOD was relieved of its responsibility for EEO enforcement in the shipyards and it was transferred to the Office of Civil Rights in the Maritime Administration of the Department of Commerce. Also in 1968, Tenneco, Inc., a worldwide conglomerate, bought Newport News Shipbuilding and Dry Dock Company.

In addition to the organizational changes affecting the yard, OFCC issued Order 4 which calls for all government contractors under their jurisdiction to develop affirmative action plans with goals and timetables. These AAP have to be approved by the reviewing personnel of the responsible monitoring agency.

In late 1969 and early 1970 things began to fall into place. In late 1969, the staff of the Eastern Region of the Office of Civil Rights for the Maritime Administration conducted a regular annual compliance review and after an intensive review of the records found that the yard was not in compliance. Early in 1970, the Office of Civil Rights in the Maritime Administration in Washington, under the leadership of a new director, Andrew Gibson, moved to correct the situation by delaying authorization to the company of funds for the laying of the keel of a nuclear aircraft carrier, the Eisenhower (a preaward clearance denial). Predictably, company top management appealed to Congressional officials and the White House to overturn the decision. However, many trips to Capital Hill and audiences with White House personnel convinced the management at Newport News that the Maritime Administration would not yield.

A supplemental plan was worked out by the Maritime Administration and the yard, but just when these parties thought they had things settled, Art Fletcher, an Assistant Secretary in the DOL, intervened and rejected the supplemental plan as inadequate. This led to further changes and strengthening of the supplemental AAP, with eventual settlement in the form of the June 12, 1970 agreement.

This struggle went on for five months, and one can conclude that somewhere along the way the Tenneco management at Newport News decided that it would not happen to them again. The new president of the yard issued a strong statement as the covering letter of the June 12, 1970 agreement. He brought in a special assistant, a black educator from the Newport News area, to work with him and the black community in the labor market. He established a special personnel officer with EEO responsibility who was to report directly to the vice-president in charge of personnel. This officer was assigned a black deputy, in fact, the first black to complete the apprentice school with training as a marine electrician. The word went out to the black community that the new management "was for real." This has proved to be the case.

An important part of the June 12 agreement was the special transfer program (STP) which contained the concept of an affected class. The Blumrosen "agreement groped for, but never quite developed adequately, the concept of affected class." 14/ No such problem arose here. In the introduction to the section dealing with the special transfer program, the following explicit statement is found:

> Prior to July 1, 1966, certain jobs within the Company were filled primarily by Negroes. Although many whites worked in those jobs and many Negroes worked in other jobs, there is at least a chance that one of the factors leading to the placement and/or retention of Negroes in certain jobs was their color. As hereinafter indicated, a program will be undertaken to afford a new opportunity to such Negro employees. 15/

The agreement provided for rate retention (red circling) and transfer rights that would apply to members of the affected class. In addition, the agreement spelled out goals and timetables for white-collar jobs and indicated the kinds of recruiting methods that the yard would follow in applying the "good faith" doctrine to its efforts at meeting goals and timetables.

The special transfer program was an effort to provide opportunities for employees, who because of their race, had been denied opportunities in the past. The agreement allowed 1,835 black employees to elect to move into other lines of progression. By January 1, 1974, 298 or roughly 16 percent of the affected class had transferred. Also, at that point 28 applications for transfer were still on file. Interest centers on the 298 transfers. The status of these 298 may be seen as of January 1, 1974 in Table 18. Ninety persons have completed the program and 144 are still in training. If all

Table 18

Special Transfer Program Status of Enrollees as of January 1, 1974

Current Status or Reason for Leaving Program	Number
Returned to original department of own volition	28
Returned to original department for medical reasons	7
Returned to original department for failure	19
Terminated	8
Deceased	2
Satisfied provisions of program	90
Presently in program	144
Total	298
Outstanding applications	28

Source: 1974 Affirmative Action Program for Equal Employment Opportunity at the Newport News Shipbuilding and Dry Dock Company, p. 58

of these 234 persons could be assumed to be successful in the program, that would still constitute no more than 13 percent of the total eligible. Even though this program has produced meager results, blacks have done well at the yard recently, as is evident in the next section.

Perhaps one reason more blacks did not elect to transfer was the fact that transferees could not carry forward their yard seniority into the new line. The members of the class competed for openings among themselves on the basis of yard seniority, but those who moved kept their seniority in their old line while accumulating seniority in the new line. As we shall see, this kind of dual seniority was later rejected by the OCR in Maritime Administration at Alabama Dry Dock as being inadequate.

Overall Changes in Racial Employment Patterns

Black participation at the yard has not been a problem; the Huntington family decided that issue early and there has been no backsliding on that issue. Further, for a long time blacks have been able to achieve first-class mechanic ratings. However, segregation that existed in the community at large was also practiced at the yard. The initial breaks in this pattern came during the decade of the 1950s when the first black entered the apprentice school and the first black clerical came on board. The first big move to break up the segregated pattern of work conditions came with the Blumrosen agreement in 1966. The 1970 agreement won by the Maritime Administration was designed to overcome the present effects of past discriminatory initial placement decisions. The really beneficial decision seems to have been made in the early 1970s when it appears that the Tenneco management took the stance that their access to federal contracting monies would never again be jeopardized by the yard's racial practices.

Students of fair employment practices in this country confess to a dearth of experience in writing up successful cases. Newport News Shipbuilding and Dry Dock Company is a successful case. All of the following numerical examples are drawn from Table 19. Blacks comprise 26 percent of the population in the labor market area that the yard draws from. Hence, it can readily be discerned that overall participation is no problem. Further, the percentage of skilled jobs held by blacks ran to 43 percent by 1974. We need to digress to make a point on blue-collar representation by blacks at the yard. In 1974 the company was allowed to eliminate the goals and timetables section for black males in the blue-collar operations except for the electrical department. This is a highly unusual achievement.

Even if the blue-collar experience of black males is outstanding, it is not the only area that warrants commendation. Blacks in 1974 held more than 32 percent of the office and clerical jobs. The importance of this statistic is understood by remembering that the first black clerical was hired in 1956.

Next comes an examination of the three top jobs: Managers, Professionals, Technicians. In 1966, as Rubin pointed out, 16/ the yard had 32 black managers out of a total of 1,997 managers. This comes out to something less than 2 percent. By January 1974, the total number of managers had changed from roughly 2,000 to 3,000 and blacks held 270 of these slots or nearly 9 percent. In March 1971, the yard employed 46 black professionals out of a total population of professionals of 2,962, or less than 2 percent. The number of black professionals rose to 159 or 4.7 percent of the total (3,408) by January 1974. Even though this is low relative to number of blacks in the local labor market, it is not low in relation to the number of black professionals in the country who are qualified to work in shipyards as professionals. Black technicians comprised about 5.4 percent of the total in March of 1971, but had increased to nearly 18 percent by January 1974.

To summarize: Participation by blacks is no problem. Neither is black participation among the entire range of blue-collar employment, except in the electrical department. The yard has a clerical work force that is nearly 33 percent black. Further, the rates of black participation among managers, professionals, and technicians are so far above average as to be impressive. In these latter three jobs it can be asserted

Table 19
Summary of EEO-1 Reports
By Date Submitted

	March 1971			February 1972			February 1973			January 1974		
	Total	Black	Percent Black	Total	Black	Percent Black	Total	Black	Percent Black	Total	Black	Percent Black
Managers	2,151	92	4.3	2,626	180	6.9	3,038	251	8.3	3,051	270	8.8
Professionals	2,932	46	1.6	3,126	91	2.9	3,513	128	3.6	3,408	159	4.7
Technical	1,112	60	5.4	1,410	137	9.7	2,100	247	11.8	1,473	265	17.9
Office	2,079	428	20.6	2,784	740	26.6	2,776	904	32.6	2,346	768	32.7
Skilled	6,742	2,177	32.3	6,953	2,484	35.7	8,565	3,603	42.1	8,011	3,488	43.5
Semiskilled	2,284	1,349	59.1	2,376	1,516	63.8	2,320	1,283	55.3	2,295	1,358	59.2
Laborers	823	449	54.6	4,184	2,434	58.2	3,576	2,100	58.7	2,971	1,471	49.5
Service	324	155	47.8	362	188	51.9	492	244	49.6	437	224	51.3
TOTAL	18,447	4,756	25.8	23,821	7,770	32.6	26,380	8,760	33.2	23,992	8,003	33.4

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SOURCE: *1974 Affirmative Action Program for Equal Employment Opportunity* at the Newport News Shipbuilding and Dry Dock Company, p. 48.

that the personnel office has as a legitimate defense that they have bumped up against supply limitations of well-trained blacks. It is likely also that the yard, which now has roughly 15 percent of its student body in apprentice school made up of blacks, has encountered supply limitations among blacks in its extensive recruiting efforts.

If there are scarcely any problems with the yard's EEO record with respect to blacks, one cannot say the same thing with respect to women. It is true that in the late 1960s the yard began to hire, as have other shipyards, more and more women in blue-collar jobs. However, it is more of a breakthrough phenomenon than an across-the-board set of changes. Evidence for this, of course, resides in the goals and timetables section of the AAP for women. The yard is making an effort in this direction, but numerical success is still in the future.

The tone so far has been one of unqualified success. This has to be tempered with an understanding that not everything has gone well with the EEO operation of the yard. Two examples will suffice to make the point.

The southern Virginia area has a history of segregation of the races, and of course, this included the school systems. When the move finally came in the area to integrate the schools, there was a predictable fight over the color content of the emerging integrated faculties for the school systems. Prior to the integration of systems, the area's schools had a faculty that was roughly 38 to 39 percent black. Subsequent to the integration, the area's schools had a faculty that was roughly 28 to 29 percent black. This event resulted in a sizable number of unemployed black school teachers. There is no intent to examine the procedure by which this was brought about, but casual empiricism suggests that the school boards enforced a credentialing rule that fell disproportionately, but not surprisingly, on blacks. In any event, the personnel office of the yard found several ex-school teachers applying for jobs - any jobs. Many black school teachers entered the lowest classifications in the production and maintenance sections of the yards. These people had schooling years beyond that of most, practically all, of the blue-collar employees in the yard, including most of the supervisors in the operating and maintenance departments. In short, people with 10th-grade educations or less were supervising college graduates. To put it briefly, such is the influence of "credentialing" in our society, that this did not look good on a printout that was being scrutinized by the staff of a government agency. Further, it produced some morale problems in the yard - so much so that the personnel officer designed a form to be signed by these college-educated employees indicating that they knew full well what they were getting into. Questioning by the OCR and the morale problem led to a harsh rule: no one with college education would be allowed to take a job in the production and maintenance sections of the yard. This undoubtedly takes some heat off the EEO officer, but it is clear that such a policy is more a reflection of the status symbols associated with blue-collar work and education that it is judging each worker's ability and desire to do the work.

A second problem is more serious in that it may have ramifications extending beyond the shipyards. This involves the history of black/white job designations and the problems that come about when an integration effort is mounted. In the course of this study there have been numerous discussions of the problems associated with token blacks as they move into previously all-white departments and units. However, that is not the whole of the matter if the Newport News experience is a typical case.

When the yard made the move to correct the inequities of their history, a rule was developed and incorporated into their AAP. The rule was simple: if a department was less than 35 percent black, the personnel office weighted the color content of interviewees sent to the department on the black side. Conversely, if a department was over 35 percent black, and some are heavily black, the personnel office weighted the color content of the interviewees sent to the department heavily on the white side. In the latter case, the yard experienced some difficulty, but this requires another digression.

The Newport News yard has about 24,000 employees. The bulk of these serve in blue-collar jobs in the production and maintenance departments. In order to preclude a wholesale movement of people within the yard, the personnel office has a fairly rigid transfer rule. To be sure, they do not call it that, but that is what it amounts to. The rule is that the transfer has to benefit the employee and the yard. This means, in the first case, that the employee must be able to reach a higher grade by transfer than by staying where he or she is. This eliminates a great many would-be transfers, and the second portion of the rule discourages others.

The yard has experienced some difficulty in retaining white employees in heavily black departments. Generally, after a few months on the job, white employees have requested transfers, complaining of harrassment by black workers. In the usual case the white worker is serious about the harassment and the yard is serious about its transfer rule. Result: another termination.

Many of these heavily black departments still have white supervisors. This means that the yard often has either all black or heavily black units with white supervision. The EEO officer who has wrestled with this situation for some time now has reached a conclusion that is another dubious victory for EEO. That is, as he puts it, "If I can't slot whites in at the bottom, then at least I can promote blacks into the foremen jobs and eliminate the strict color line between supervisors and non-supervisory employees." 17/ What this means, of course, is that jobs may become resegregated by this process.

Summary

This evaluation of the efficacy of the federal government's enforcement efforts in the area of employment discrimination at Newport News is divided into four parts: (1) the role of local labor market pressures, (2) the relationship between the Blumrosen and the Maritime Administration agreements and the pattern of overall change, (3) the power of the federal government in this industry, and (4) the role played by the Tenneco management in responding to federal government pressure.

The local labor market seems to have escaped the high rates of unemployment that have plagued most of the country from 1970 on. At one point the local authorities were reporting that the rate of unemployment in the area was down to 2 percent. From 1966 to 1974, the total volume of employment at the yard was on the increase, with the exception of the movement from 1973 to 1974. So the yard was looking for bodies in a labor market that has to be described as tight. Further, although wage rates generally run below rates paid for comparable skills in other lines of work, it also is true that in this period the yard offered steady work. But like the other shipyards in this study, they offered rough, dirty work where the employees are often exposed to the extremes of weather. One could argue that the upward drift in the participation rate of blacks is attributable to labor market pressures. However, it is difficult to argue that labor market pressures produced the movement to foremen status or the changes in the number of blacks working as managers, professionals, and technicians.

The two agreements produced a lot of excitement, and they certainly led to a lot of rule changes. However, the numerical movement attributed directly to these two battles is quite low in a yard that now employs about 24,000 persons. A few promotions came out of the Blumrosen agreement, and a number of blacks were able to enter new lines of progression as a result of the changes demanded by EEOC. The size of the affected class in the June 1970 Maritime Administration Agreement, 1,835, suggests that many changes could have been made. But by 1974 only 90 persons had completed the special training program and 144 were still receiving training. Hence, the conclusion is that there is no numerical relationship between the two agreements and the successful EEO stance of the yard.

As previously indicated, the company effected broad improvements in black participation across the board. And it is readily apparent that there is no connection between the numbers of persons affected and this account of the impact of the two settlements. What did occur was an aggressive recruitment and promotion policy by the personnel office of the yard. And it paid off handsomely. The focus is on how it took place.

First of all, there were lots of blacks available, both in the labor market area and employed at the yard. Second, the Maritime Administration group performed outstanding staff work. The initial move in the June 1970 agreement flowed from a well-done compliance review in late 1969. But the crucial item in the change was a combination of government pressure and management's response to that pressure.

The Maritime Administration simply refused to yield on releasing funds for laying the keel of the nuclear aircraft carrier, Eisenhower. This use of power convinced the Tenneco management that they should so change things that they would not encounter the threat of contract cancellation or the delay of funds again. It is hard to avoid the conclusion that at the highest corporate level, the decision was "never again."

III. INGALLS

Pascagoula, Mississippi is a little town that lies at the mouth of the Pascagoula River on the Gulf of Mexico. For decades the natural harbor served as the base for a small shipbuilder, the Ingalls Iron Company. Litton Industries absorbed the company in the early 1960s and changed the title to Ingalls Shipbuilding Division.

The original shipyard is known as the East Bank yard now that there is a Litton-owned yard on the West Bank. Soon after Litton bought the old yard, plans were laid to construct a new facility and the idea was conceived and executed that the new yard would replicate the modular method of ship building that the Japanese have used with considerable success in the construction of super tankers. It took years to bring this plan to fruition.

For one thing, the West Bank needed a considerable amount of dredging in order to set up the yard. This kind of work is time-consuming and very expensive. Litton officials convinced the state of Mississippi that it was in their interest to prepare the waterway for the proposed new shipyard. The Mississippi legislature responded with a $130 million bond issue and work was begun. The Litton people began to staff the yard in late 1969.

The old yard was organized by the Metal Trades Council which had and has nine constituent unions. The Litton management felt constrained by this union, and moved to keep them out of the West yard. The new yard was set up as a wholly independent subsidiary. This produced litigation that began with union and company attorneys pleading the original case before the National Labor Relations Board, a lengthy and costly process. The company lost its fight with the union, and in May 1973 a single contract was signed between Litton and the Pascagoula Metal Trades Council for workers on both sides of the river.

One obvious reason that the state of Mississippi was so lavish in its welcome of the conglomerate Litton was the proposed number of jobs that would be available to Mississippians.

Litton has delivered on this, but other problems followed in the wake of employment expansion in the town of Pascagoula. The projected increases in number had the usual impact on land prices that come with the boom-town atmosphere. Pascagoula found that it had a severe housing shortage and workers faced serious transportation problems reaching the shipyards.

Further, although Litton has been extremely successful in obtaining Naval contracts as well as contracts for building ships for the U. S. commercial flag operations under subsidy from the Maritime Administration, the company has experienced some difficulties as a shipbuilder. This has subjected Litton to vociferous criticism by Senators and Congressmen, especially on two issues: cost overruns and poor performance. One manifestation of this criticism was an internecine management fight. Part of this fight involved extensive employment of aerospace engineers in the shipbuilding industry. Litton, as a conglomerate, had extensive holdings in the West Coast aerospace industry. When the federal government cut back drastically its outlay for Air Force hardware, Litton found it had a surplus of aerospace engineers. Many of these were transferred to the shipbuilding facility in Pascagoula. It turns out that working with the tolerances required by users of aluminum and steel plate demand different backgrounds. To synopsize another long story, both a management team and set of aerospace engineers were dropped from the shipyard. The yard reverted to its older style management and integrated the management functions of the two yards.

All of these events occurred against the backdrop of changing race relations in the state of Mississippi. When Litton bought into the area, the town and the shipyard were racially segregated. So the drama concerning the role of the civil rights employment enforcement bureaucracy unfolded in a situation where there was (1) a tremendous growth in numbers of employees, (2) a severe housing shortage and transportation problems, (3) desegregation of the school systems, (4) opening up of public accommodations to all races, (5) a management-union fight that took years to settle, (6) a family fight among corporate managers, and (7) vociferous criticisms by powerful outsiders about the poor performance of the yard.

The yard is the major employer in Jackson County, so the level of economic activity in the county varies with employment in the yard. Further, it can be seen that unemployment in the county dropped at the beginning of the 1960s and stayed at very low levels, around 3 percent for an eight-year period. Thus, the labor market has been "tight" for the shipyard for the entire period of our interest, 1961-1973 (see Table 20).

The Spelling Out of the Drama

The yard got its first taste of federal government interest in its personnel practices in 1962 when staff members of the President's Committee on Equal Employment Opportunity (PCEEO) showed up for an investigation. The only review we have of this action suggests that although overt signs of segregated facilities at the yard were removed, virtually nothing was done about employment practices. 18/ At that point the yard had a black participation in its work force of about 4-5 percent.

Shortly after the initial contract by PCEEO staffers, compliance responsibility for the yard was assigned to the Navy. On rather sketchy evidence, 19/ it appears that some changes were made in discriminatory placement patterns. This was effected through federal government funding. Shortly after the Manpower Development and Training Act (MDTA) of 1962 was passed, the U.S. Department of Labor became interested in funding the yard, which was even then the largest private employer in Mississippi, for training under the new legislation. This gave the personnel officials at the yard a remarkable opportunity. They were able to have the federal government pick up the tab for training shipbuilders, and at the same time they could slot blacks into the crafts via this training. From the beginning the training classes were at least 30 percent black. This was the first break in the yard's segregationist pattern in the skilled trades. The Metal Trades Council stayed on the sideline during these changes.

Table 20

Unemployment of the Civilian Labor Force Jackson County, Mississippi

Year	Percent
Place of Residence Basis	
1961	10.6
1962	7.4
1963	4.4
1964	8.1
1965	3.2
1966	2.4
1967	2.4
1968	2.7
1969	2.4
1970	2.7
1971	4.4
Place of Work Basis	
1972	3.4
1973	3.2

SOURCE: Annual Reports, Mississippi Employment Security Commission. Note: These data are observations for the month of January only. In a telephone interview with the manager of the Pascagoula branch of the Mississippi Employment Security Commission, it was confirmed that they reflect the general tightness of the local labor market.

There have been civil rights protests about the practices of the yard, once in 1961 and again in 1964. The first was organized by longtime battler, John LeFlore of Mobile, Alabama. The second was organized and led by Charles Evers, then head of the NAACP in Mississippi. The reader may note that both of these demonstrations were organized by outsiders, a circumstance indicative of the fact that the local black community was not very well organized.

In 1968, the Department of Defense reorganized its EEO efforts and the Navy was dropped from compliance responsibility for the yard. At this time the Office of Civil Rights in the Maritime Administration was established, with compliance authority over coastal shipbuilding and ship repair. The following year, 1969, Order 4 was issued, and the first AAP for the yard was prepared. The enforcement people in compliance agencies had developed the "preaward clearance" process. In the spring of 1969 the Navy let a multi-billion dollar contract to Litton without a preaward clearance. This information got out and became the subject of a highly critical Senate speech by Senator Ted Kennedy from Massachusetts. The OCR was in the process of investigating the yard at the time, and produced some changes in the AAP. There was not, however, any agreement about an affected class, although goals and timetables were rewritten with a view to eliminating underrepresentation in many crafts.

Following the passage of the 1964 Civil Rights Act, the EEOC began to get charges from aggrieved individuals. Some of these were settled, but many languished in the agency's backlog of charges. As late as 1968 the Painters Union, a member of the Metal Trades Council, had segregated locals. Neither unit was wholly black or wholly white, but the numbers were so decisive that the situation almost amounted to segregation. The largely black local was mostly confined to the yard, and was comprised of Rust Machine Operators, Sandblasters, and the like. Both the AFL-CIO Civil Rights Division and the Metal Trades Department ruled that the units should be merged forthwith. Litton was not free of guilt in that the company had divided the lines of progression (LOP) in the Paint Department to fit the segregated nature of the two Painters' locals in Pascagoula. Both of these situations were cleared up at the same time. Litton integrated the LOP by putting the black jobs into the bottom of the line that was organized by the mostly white local. This was functionally defensible. That is, the union and the company had set out to give the blacks the worst jobs and they were successful. Hence, when the two lines were merged into one, most of the poor jobs were also black and fell at the bottom of the line. This did not end the issue. Blacks who so elected were tested and at least 15 of them were certified as first-class painters. There was no connection between this situation and the affected class settlement, but many of the blacks in the black local wound up in the affected class.

There are two extremely important facets to the affected class settlement in Pascagoula. First, the unions had a segregationist past that could have led blacks to vote for no union or another union. Second, the company entered the affected class settlement negotiations with the clear knowledge that they would add thousands of employees to their rolls in the coming months.

The Metal Trades Council leadership perceived that the unions were facing the threat of decertification because of their racial policies. Following the passage of the Civil Rights Act, the local Metal Trades Council reviewed its black apprenticeship admission policies. The result was that the first black apprentice in the Pascagoula Metal Trades Council began his apprenticeship in the spring of 1965. The issue of race was raised in other ways in Mississippi during the mid-1960s. Public accommodations were opened to all races in this period, and federal authorities moved to integrate the Mississippi public school system. When the state AFL-CIO leadership endorsed the move to integrate the state's schools, the Metal Trades Council in Pascagoula withdrew its membership in the state body for that reason. Mississippi has a right-to-work law and a portion of the work force at Litton had (and has) some strong reservations about unionism. These things came together to produce a fear of possible decertification, hence the Metal Trades Council and AFL-CIO affiliates up the line got involved when the OCR in Maritime made its move to carve an affected class out of the work force at Litton.

The negotiations for the affected class settlement began in the spring of 1970 and an agreement was signed on October 8, 1970. The government's effort was led by the OCR with involvement by the senior officials from Washington and the senior staff from the regional office in New Orleans. Litton was represented by the Director of Industrial Relations with assistance from the legal staff. The officials of the local Metal Trades Council became immersed in the discussions and hired legal counsel for the duration of the negotiations. The leadership of the Mississippi state AFL-CIO lent a hand also. But this was not all of the union involvement. The union people, all up the line, saw a threat to the seniority system and feared decertification. In Washington an agreement was reached between the AFL-CIO Metal Trades Department and the Civil Rights Division. That agreement resulted in dispatching the Deputy Director of the CRD to Pascagoula to assist in working out the affected class settlement. This union concern was later to be supplemented by the AFL-CIO establishing a local unit of the Human Resource Development Institute (HRDI) in Pascagoula. Also, the Recruitment and Training Program (RTP) was invited to assist the Metal Trades unions find apprentices.

In the negotiations the parties agreed to name 348 blacks who had been hired into certain jobs prior to July 1, 1966. These persons were classified as rust machine operators, sandblasters, laborers, spray helpers, painters' helpers, and so on. A large number of the class, but not a majority, were formerly members of the segregated Painters local. The remedy provided two avenues to the members of the class. One involved promotion in a line of progression (LOP) in the east yard and the other involved transfer to a new LOP in the new yard on the West Bank. The sticking point in the negotiations was the provision, insisted on by the OCR, that the members of the affected class would have carry-forward seniority. That is, if they went into a new line they would take their yard seniority with them once they qualified for a position in the new line. The unions bargained for a face-saving clause in the settlement. Litton granted a provision that specified that no non-member of the affected class would suffer unemployment or rate reduction as a result of benefits accruing to members of the affected class. This was easy for Litton to concede since the growth projection for employment at the yard ran into the thousands. Litton's estimate that this provision would be costless proved to be correct. The agreement worked out rather well. As a compliance review dated April 12, 1973 put it:

> Relief has been made available to all members of the class. Eighty-two percent ... 286 of the original 348 Affected Class members have taken the relief options. 20/

To repeat, relief took one of two forms -- either transfer to the new yard or promotion at the old yard (see Table 21).

Part of the union fear concerning decertification was manifest in the controversy over the ten-person Bi-Racial Committee, which the yard established in 1966 without union involvement. The objective of this committee was to handle EEO-type problems before they went to outside agencies such as EEOC or later OCR in Maritime Administration. The five nonmanagement members were all black employees from the yard. The union officials were suspicious that management would use this committee to undermine the union. That is, the fear was that Litton would use the race issue to break the union. In fact, the union people so believed this that one agreement that came out of all these negotiations was the establishment of Human Relations Committees on both sides of the river. Later, when the two yards were merged, the collective bargaining contract called for one Human Relations Committee for the entire yard. Not long after that, the committee fell into disuse. Ths clause remains in the contract, but the committee does not meet. There has been no interest by the membership in using this method of processing grievances.

The Bi-Racial Committee had only advisory authority in the cases brought before it. Management representatives failed to attend and sent low-level alternates in their place. Further, a personality conflict developed between the elected head of the committee and the other members. At this point, the director of the regional office of Civil Rights for Maritime Administration intervened. The OCR wanted the committee restaffed and restructured with some power to effect remedies. The negotiations took place in the spring of 1973. Management agreed to place high-level executives on the committee

TABLE 21

STATUS OF THE AFFECTED CLASS
December 15, 1972

Current Status	Numbers[a]
Transferred to the new yard	98
Promoted	153
Separated	51
No change[b]	46
Total	348

SOURCE: Report filed by OCR, New Orleans, dated April 12, 1973.

[a] The first choices of the members of the affected class resulted in 97 transfers to the new yard and 189 promotions at the old yard for a total of 286 actions out of 348 possible choices. However, some of these retired, died or were fired. Six were demoted, and two of the transfers to the East Yard returned to their old duty stations. Seven members who were originally promoted in the East Yard transferred to the West Yard.

[b] These employees did not apply for transfer or promotion.

and gave the committee enforcement power. An appeal mechanism was built into the operation. The losing party could appeal the decision of the committee to the chief executive officer of the yard. Finally, the controversial member of the committee agreed to step down. The Bi-Racial Committee, renamed the Affirmative Action Committee, operates as a mini-EEOC. The committee hears and investigates complaints. It can order any of the standard Title VII remedies, except back pay. All things considered, this is a real step forward. One official at the yard guessed that about 60 to 65 percent of their EEO complaints came to the committee. Hence, the committee serves the function of reducing the work load that would otherwise flow to EEOC or the OCR in New Orleans. However, many union officials refuse to recommend that their members use the committee, usually brushing aside the suggestion with the caveat that "only company men sit on that committee." 21/

Growth and Change in Southern Mississippi

For many years federal officials who work on employment discrimination have used a benchmark for comparison against an employer's performance, usually the percentage of a minority in the local population or in the local labor force. There has been a sharp difference of opinion on the matter of the proper benchmark between OCR staff and Litton personnel officials.

Order 4 made it necessary for government contractors to file AAP. Further, it was necessary for the government contractor to specify the minority and sex content of the labor force that is drawn upon. The usual procedure by the contractor is to rely on two sources: the decennial census, and labor market reports issued by state employment services. These two sources have been found acceptable by the OFCC. However, the contractor and the compliance agency can get into some understandable disagreement about the geographic size of the government contractor's labor market. Such was the case in Pascagoula.

The argument began when the first AAP for Litton was filed. The report identified five counties in Southern Mississippi as the appropriate labor market area, and those counties yield a black percentage (population basis) of about 16 percent. The company seized on this as the relative benchmark. The OCR in Maritime Administration disagreed; in particular, they claimed that all of Mobile County in Alabama should be included. This would have raised the benchmark. Further, the OCR staffers wanted to add counties in Mississippi. These latter counties had larger portions of blacks in their populations than did the five southernmost counties. The issue was resolved by hard bargaining. The OCR agreed that Litton should be allowed to survey their work force and determine their residence. This was done and the result was that the western half of Mobile County, Alabama was included in the area, but since this portion of the county had the same percentage of blacks as the original five-county area in Mississippi, there was no change in the benchmark. The additional counties in Mississippi were not added.

The issue did not die there, but was raised again when Litton began to staff up the West Bank. At this point the staffers in OCR managed to convince Litton to recruit "nationally" for some jobs and to use a different county mix. Hence, the benchmark came out to be 18.7 for the west yard while the benchmark for the east yard was 16.4 percent, as it had been from the filing of the first AAP. By the time the parties had agreed to these, the yards were merged but Litton refused to bargain for one benchmark. By the time these sessions were concluded, the issue was moot since Litton had minority percentages at the combined Litton yard that exceeded the higher of the two benchmarks. Hence, the overall participation rate is no longer an issue.

Participation in particular crafts remained an issue, however. In this shipyard, like the others in the study, the craftsmen listed in the EEO-1 reports were almost exclusively the mechanics in the various trades. In Table 22 one can see that in 1970 the east and west yards had very low, 8.6 and 5.5 respectively, black percentages. However, by 1973 the combined yard shows 20 percent. This yard, like the other yards, trains a large percentage of its shipbuilders.

Table 22

Black Craftsmen

	West Bank		East Bank		Combined Yard	
Year	Number	Percent Of Total	Number	Percent Of Total	Number	Percent Of Total
1969			286	6.4		
1970	11	5.5	269	8.6		
1971	138	9.7	356	10.9		
1972	344	13.7	481	13.9		
1973					1,212	20.3

SOURCE: EEO-1 Forms.

Hence, it is important to notice the large reservoir of blacks that are in the operatives classification and eligible for on-the-job training that will lead into the craftsmen classification. Table 23 indicates the relatively high percentage of blacks holding these jobs in the yard, but the relevant statistic is that there were over 2,100 blacks in the pipeline in late 1973.

Black clericals are shown for both yards and the combined yard in Table 24 . The overall numbers are rather small, but the percentage of blacks holding these jobs runs close to the overall black participation rate at the yard. This is rather unusual, especially for a Deep South employer, and warrants further attention in the section that follows.

Table 25 illustrates the overall status of all minorities in the combined yards as of late 1973. Interest centers on the top three jobs: officials and managers, professionals, and technicians. As the close reader will observe, the minority percentages in these three categories run 6.6, 6.5, and 11.8 respectively. These were higher percentages than at any previous time. It is hard to judge when an affirmative action recruiter bumps into supply limitations, but one can argue that it will be a few years before these rates are doubled. For one thing, there are just not that many minorities who have the education and training for these jobs. Second, it is not likely that shipyards are going to be as willing to pay premiums for minority professionals, technicians, and managers as some other employers. Third, it is at least likely that a minority with the requisite skills who is willing to live in the Deep South will decide that the shipbuilding industry offers fewer opportunities for developing potential than other industries.

Remaining Issues

The yard has accomplished some meaningful changes in overall placement of minorities; the affected class settlement was handled rather well; but some issues remain that require discussion: (1) the placement of women in blue-

Table 23

Black Operatives

	West Yard		East Yard		Combined Yard	
Year	Number	Percent Of Total	Number	Percent Of Total	Number	Percent Of Total
1969			523	31.0		
1970	55	28.4	520	37.0		
1971	372	24.6	600	32.0		
1972	736	31.5	768	36.0		
1973					2,167	40.0

SOURCE: EEO-1 Forms

Table 24

Black Clericals

	West Yard		East Yard		Combined Yard	
Year	Number	Percent Of Total	Number	Percent Of Total	Number	Percent Of Total
1969			104	12.5		
1970	50	14.8	73	18.0		
1971	55	14.8	58	17.6		
1972	90	20.4	65	19.0		
1973					229	22.0

SOURCE: EEO-1 Forms

Table 25

East and West Yards Combined
Litton, Pascagoula
1973

Job Titles	Total	Males	Females	Minorities a/								Total Minorities	Percent of Total That Is Minority
				Males				Females					
				B	O	AI	SSA	B	O	AI	SSA		
Officials and Managers	1,923	1881	42	113	0	7	0	8	0	0	0	128	6.6
Professionals	2,494	2,348	146	130	3	4	0	26	0	1	0	164	6.5
Technicians	1,220	1,078	142	112	0	3	0	28	0	1	0	144	11.8
Sales	-0-	-0-	-0-	-0-	0	0	0	0	0	0	0	-0-	-0-
Office and Clerical	1,043	94	949	28	0	1	0	201	1	2	0	233	22.3
Craftsmen	5,976	5,860	116	1,135	3	20	0	77	0	0	0	1,235	20.7
Operatives	5,412	4,755	657	1,768	0	65	0	399	0	12	0	2,244	41.5
Laborers	572	427	145	263	[illegible]	0	0	105	0	3	0	371	64.9
Service Workers	262	170	92	39	0	1	0	39	0	0	0	79	30.2
TOTALS	18,902	16,613	2,289	3,588	6	101	0	883	1	19	0	4,598	24.3

SOURCE: EEO-1 form for combined yard, December, 1973.

a/ B = Black; O = Oriental; AI = American Indian; SSA = Spanish Surname American.

collar jobs, (2) the placement of black women in low-level clerical jobs, and (3) the contribution of the outreach-type agencies.

The blue-collar jobs reported on the EEO-1 form fall into three categories: craftsmen, operatives, and laborers. The combined yard in December 1973 employed nearly 12,000 persons in these blue-collar jobs, of whom 918 or 7.7 percent were women. In 1969 no women were employed in these three job titles. For the exact number by job title and color, see Table 26. In the other yards, women have made the breakthrough into these jobs, but the Litton case represents a determined effort to recruit and place women in these jobs. Litton's policy in this regard is a replica of World War II experience, with one important difference: the change in personnel policy this time is meant to be permanent.

Earlier it was noted that the percentage of black clericals exceeded the benchmark figure agreed upon by the yard and the staffers for OCR in Maritime Administration. However, it seems that these overall rates shield a potentially explosive issue. Interviews revealed that many of the office and clerical jobs, although classified as white-collar clerical jobs, were of a low-level clerical nature. It appears, although little solid information is available that the company decided it could fill these jobs with blacks and improve their EEO position. However, it also appeared that the company did not at the same time construct an LOP that would allow the entrants a chance to move to higher grades in the white-collar area. This latter situation was scrutinized by OCR staff while making an on-site review and their observation was that (1) increasing the percentage of black clericals is a great idea, but (2) if this is done in such a way that the employees in these jobs cannot move out and up, and (3) a disproportionate number of these employees are black, then (4) the company will have created an affected class. The example cited was a unit that cut, folded, and filed blueprints. This leads to another issue.

Table 26

Female Blue-Collar and Total Blue-Collar Employees - 1973

Job Titles	Females Black	Anglo	Total	Total Employees	Female/ Total
Craftsmen	77	39	116	5,976	1.94
Operatives	399	258	657	5,412	12.14
Laborers	105	40	145	572	25.34
TOTALS	581	337	918	11,960	7.68

SOURCE: Table 25 above.

OCR staff claim and the company officials agree that there might be something wrong with the procedure of using the Mississippi State Employment Service (MSES) to test potential clerk-typists. The MSES uses a cutoff of 55 words per minute with a maximum of five mistakes before a person will be certified as eligible for a clerk-typist jobs. The issue is that the typing skill asked for is not required on many of the jobs at the yard. This may very well be true, but this situation has to be contrasted with the blueprint filing section situation previously cited. That is, if job groups are set up that take in people who cannot move up, the company may have an affected class law suit on its hands. However, if the company cannot make entry requirements stick for higher jobs in an LOP, that may cause them to suffer the affected class issue willy-nilly.

It is not argued that entry-level clericals must be prepared to be executive directors, but rather that the company should design its entry-level requirements to fit the needs of an LOP. It is common practice to establish pyramidlike job structures with the clear implication that not all low-level employees will have to be qualified to move up. The point is simply that the entry-level requirements should fit the total needs of the LOP that the entrants are placed in. This means that the typing test used by MSES is not necessarily discriminatory, but may in fact be part of a legitimate business necessity. 22/

The Contribution of Outreach

The Pascagoula yard has received some assistance in its massive recruitment tasks from two outreach organizations: (1) the Recruitment and Training Program (RTP), and (2) the Human Resources Development Institute (HRDI). Both of these organizations began to function in Pascagoula in the spring of 1971.

HRDI is a two-person unit that has concentrated its efforts on bringing exconvicts still on parole into the shipyard. The overall numbers involved are quite small; the total number of placements were not revealed to the researcher who worked on this project.

RTP began with a small staff, but in early 1974 it was increased to a total of eight. This unit has worked at bringing people, with no restrictions related to sex or race, into the yard as apprentices in indentured programs or as helpers in a LOP.

From 1971 through March 31, 1976, the RTP-Pascagoula office reported placing a total of 1615 people which fell into the following classifications.

	Number	As a Percent of Total
Construction apprentices	13	.8%
Other skilled construction workers	17	.1%
Industrial apprentices	113	7%
Industrial journeymen	137	8%
Other skilled industrial workers	822	51%
Other occupations	513	32%

Although data on placement characteristics were not conveniently available on activity before September 15, information available on the period September 15, 1975 through March 31, 1976 are revealing and indicative of RTP's performance. Data for the 740 placements made during this nine-month period indicate that 34 percent were female and 70 percent were black. Moreover, more than 99 percent were reported placed at jobs earning $3.00 per hour or more. Available information shows that prior to placement, 66 percent had been earning less than $3.00 per hour.

Although the data are not conclusive, they do tend to show that the RTP outreach program in Pascagoula made substantial numbers of placements, especially after 1974. Further, it appears that a majority of the placements have been black and a significant portion have been female; and the project has effected notable upgrading for its placements.

Summary

This evaluation of the federal government's enforcement efforts in Pascagoula, Mississippi can be considered in four parts: (1) the impact of labor market pressures, (2) the relationship between the affected class settlement and the growth in employment, (3) the role played by the local unions and their federations, and (4) the exercise of surveillance by the federal government.

Jackson County, the county that hosts the Litton yard, has experienced tremendous growth in the numbers of persons employed. Further, this has been a steady trend dating back to the early 1960s. This is largely a function of the growth of the shipyard, especially after the Litton people began to staff the West Bank. Along with the increas in numbers has come a rather low annual rate, about 3 percent or less, of unemployment. More than this, the yard has drawn employees from afar. There is no question about the tightness of the labor market. Further, the labor market is tightened still more by the yard's high rate of voluntary terminations. As one management official put it, "We have cut turnover nine different ways, and we still suffer from it." 23/ In any event, there is no doubt that the yard has been an active recruiter. So much so that it appears that the staffers in OCR in New Orleans were wasting their time arguing about what was the correct labor market size to be used as the basis for a benchmark. Hence, much of the upward drift in numbers of minorities at the yard is a combination of the demand by Litton and the availability of minorities in the area surrounding the facility. In many areas of endeavor, economic growth is the ingredient that lubricates the process of societal adjustment. Such has been the case in southeastern Mississippi.

It would be difficult to find a better example of the lubricating contribution of economic growth than the affected class settlement worked out by the participants at Pascagoula. Recall that during the process of negotiations all parties worked with the clear understanding that the number of new hires would increase by the thousands in the next few months. This problem was made easier because the affected class numbered no more than 348. If all of these moved out, they could be scattered among some eight other constituent members of the Metal Trades Council and the IBEW local. Hence, no union received a large number of members of the affected class. But growth allowed more than that. The parties agreed, under pressure from union officialdom, that non-affected class members employed before a certain date would not suffer either unemployment or a rate reduction as a consequence of rights afforded a member of the affected class. This guarantee was to be in effect for two years. The reader will learn in the next chapter that Alabama Dry Dock balked in no uncertain terms when this kind of proviso was suggested for their affected class agreement. However, at Litton it was done without hesitation. Such is the magic of growth.

Earlier it had been stated that one could attribute the increase in the numbers of minorities at the yard to the twin influences of demand by Litton and the availability of blacks and other minorities. Other pressures account for the upgrading of minorities at the yard. Prior to passage of the Civil Rights Act of 1964, no black had ever been an indentured apprentice at the yard. The first black entered an indentured program at the yard in the spring of 1965. When the affected class situation surfaced in 1970, the issue of token minority participation in the crafts arose. About that time, unions at all levels encouraged the work of the Recruitment and Training Program, and the AFL-CIO with monetary help from the Manpower Administration set up the HRDI unit in Pascagoula.

Most important, the training facilities at the yard were opened to all comers. The unions and the company turned around on this issue, with a strong push from the OCR in New Orleans. This turnaround, in the context of an accelerated growth in numbers, has produced a problem at the yard.

During the first part of 1974, the yard had about 1,400 indentured apprentices. The director of training indicated in an interview that he had too many apprentices going through the programs. This same observation was voiced later in the year by the director of the RTP operation. Their reasoning was similar. The argument was that the ratio among journeymen, apprentices, and helpers was so out of kilter that it was not possible to rotate the apprentices as required by the rules of the joint apprenticeship committees. That is, each apprentice is required to work so many weeks with journeymen on different tasks so that by the end of a specified time the apprentice can be tested on all aspects of the trade. Hence, laudable efforts at training large numbers of young would-be shipbuilders was diluting the quality of the training. An effort was made to cut back on the intake of new apprentices by reducing the maximum age requirement from 24 (where it had been for years) to 22.

This raises a potential conflict. Given a history of exclusion at the yard, there are young minorities who earlier had very limited access to the indentured training programs because of their race. The reduction of entry age may produce what EEO experts call "a disparate effect." No doubt this is true, but under the argument of business necessity, a case can be made that the training facility is overloaded with numbers, thus deleteriously affecting the quality of training. However, this does not end the argument. It may be that the parties will have to work out a solution that does two things: (1) reduces the number of new apprentices on the grounds of business necessity, and (2) does so by using a criterion or set of criteria that does not produce a disparate effect on minority and female applicants. This example points to the need for continuing surveillance.

More than continuing surveillance comes from the federal government. Litton has been a successful negotiator for federal government monies. Litton also successfully negotiated with the state of Mississippi to spend $130 million on a dredging operation that would make the west bank capable of supporting a major shipbuilding installation. Shipbuilding depends on government money, and that kind of dependence enhances the power of compliance agencies. It is difficult to avoid the conclusion that the pattern of overall change requires more than a labor market explanation. The movement of minorities into the pipeline for upgrading to mechanic status, the active recruitment of minorities into indentured apprenticeships, and changing color content of the clerical work force are all indications of a deliberate response to the prodding of the staffers in the OCR of Maritime Administration. The number of females in blue-collar occupations is a manifestation of civil rights pressure (Table 26). The conclusion is clear: the upgrading afforded minorities and women is seen as the price for continued access to federal government monies.

IV. ALABAMA DRY DOCK AND SHIPBUILDING COMPANY

Alabama Dry Dock and Shipbuilding Company (ADDSCO) was founded in the early 1920s. The yard had approximately 2,900 employees in 1974. At the peak of shipbuilding activity during World War II, the yard employed some 30,000 workers. However, the yard is primarily a repair facility. Since World War II the company has constructed two vessels for the U.S. Navy and in 1974 was under contract to construct floating offshore oil-drilling platforms. The dominant feature of the yard, and the one that has heavily influenced the content of labor-management relations, is the nature of ship repair work.

Ship repair work is unpredictable, often calling for large numbers of employees on short notice. Hence, many of the yard's workers have adjusted their life styles to the erratic nature of the call-in/layoff activity at the yard. In the past, many regular employees were small farmers who held a second job at the yard. But the most important adjustment to the volatile nature of employment at the yard was the insistence on craft seniority in the collective bargaining contract.

The collective bargaining contract is between the company and Local 18 of the Industrial Union of Marine and Shipbuilding Workers of America (IUMSWA). Although this is an industrial union, it is extremely craft conscious. In fact, the raison d'etre of the union has been its ability to protect its members' employment rights against those who have less time in an occupation or unit. Until very recently, there was no such thing as yard seniority except for noncompetitive benefits.

Actors and Environment

In December 1973, Judge Hand of the United States District Court in Mobile issued a consent decree worked out by the parties after a rather lengthy period of discussion, debate, and often acrimonious exchanges. There were several actors in this drama: the management of the company, the attorneys for the company, Local 18 of IUMSWA and their attorneys, the Office of Civil Rights in the Maritime Administration of the Department of Commerce, an Assistant Secretary of Commerce, attorneys for the EEOC, the OFCC in the Department of Labor, and two local civil rights organizations -- the NAACP and the Non-Partisan Voters League.

As noted previously, in mid 1968 the compliance function for coastal shipbuilding and ship repair, handled by the OFCC under Executive Order 11246, was moved from the Department of Defense (DOD) and Navy to the Office of Civil Rights in the Maritime Administration in the Department of Commerce. In 1969, Order 4 under the Executive Order became effective and the contractors covered by the order were compelled to submit acceptable affirmative action plans (AAP). The submission of the 1970 AAP by ADDSCO was the beginning of the drama that culminated in Judge Hand's acceptance of a consent decree in December of 1973.

The Mobile Economy

The Mobile Standard Metropolitan Statistical Area (SMSA) is composed of Mobile and Baldwin counties. The total population was 363,389 in 1960 and 376,690 in 1970. Blacks were about 30 percent of the total population in both census years. The best guess is that this percentage edged toward 31 or 32 percent by 1975. Spanish-surnamed Americans and people listed under "other races" account for no more than 1 percent of the total population.

The local economy is rather diversified, with no one dominant industry or sector. The wage and salary labor force grew slowly, by about 1 percent a year, from 1960 through 1973. The civilian labor force in the SMSA has shown a slight increase (Table 27). The overall rate of unemployment from 1960 through 1973 fluctuated about the 5 percent mark. Blacks represent something like 25 percent of the employed civilian labor force and are burdened with roughly 40 percent of the area's unemployment.

Table 27

Mobile SMSA
Civilian Labor Force and
Annual Rates of Unemployment
1970-1973

Year	Civilian Labor Force (in thousands)	Rate of Unemployment (percent)
1970	139	4.5%
1971	139.3	5.6%
1972	142.6	5.2%
1973	149.7	4.3%

SOURCE: *Mobile: Metropolitan Area - Area Manpower Review*, (Mobile, August 1974. Alabama Department of Industrial Relations, Alabama State Employment Service), p. 23.

The local labor market has had sufficient slack in it so that ADDSCO could tap ample numbers of potential new employees, even paying lower wages than competitive employers. (The average weekly wage for shipbuilders and ship repair workers ran about $10 a week under the average weekly wage for all manufacturing employees in the same area.)

The Unfolding of the Drama

The filing of an AAP in 1970 by ADDSCO set the stage for the ensuing action. The Office of Civil Rights (OCR) in the Maritime Administration found the AAP deficient. The yard exhibited a classic pattern of making job assignments on the basis of race and further restricting movement by blacks into certain lines of progression (LOP) and certain departments. After the 1970 AAP was rejected, OCR staff and industrial relations personnel at ADDSCO worked out a supplemental agreement. The major concept advanced in this agreement was the definition of an affected class. This was defined as all blacks hired into certain jobs before July 1, 1966. The parties agreed that discriminatory initial assignments were stopped after that date. The relief specified that members of the affected class be allowed to move into different departments and get into a line leading into the third class mechanic job. From that slot the employee could move to second class and first class status. The union agreed to the plan and it was forwarded to Washington for review. The reviewing officials in the Office of Federal Contract Compliance rejected the supplemental agreement. It was returned to the Maritime Administration with instructions to increase the size of the affected class and to give more options to the relief provided for the affected class.

Negotiations between the Maritime Administration and ADDSCO were reopened. As these talks dragged on, Maritime Administration officials began to talk about moving to debar ADDSCO as a government contractor. In late January 1971, the Department of Commerce put ADDSCO on notice that they could not bid on new government contracts. ADDSCO responded on February 10, 1971 by asking for a hearing and arguing that no action should be taken against them until the hearing process was completed. A hearing was granted, but the sanctions remained in effect. The company had argued that it could not accept the Maritime Administration's amended supplemental agreement because the union wanted protection for any members who might be adversely affected by the rights won for affected class members.

In April the government listed numerous charges against the company and concluded, as expected, by asking for debarment. This set in motion a number of actions by attorneys for ADDSCO, Local 18 and the national union, and the Department of Commerce.

While attorneys were filing and answering interrogatories and swapping stipulations of facts, OCR officials and ADDSCO staff were trying to work out an amended supplemental agreement. At the same time, the summer of 1971, the Navy began to get into the act. Sometime earlier the Navy had leased a floating drydock to ADDSCO, and the company used it for performing repair work. During the course of the preparation for the hearing, the contract expired, the Navy refused to extend the lease, and the drydock was floated away. This was an additional blow to the yard since they had sanctions applied against them that prohibited their bidding on government contracts. No one can prove that the action taken by the Navy was related to the EEO stance of the yard, but no one can convince officials in the company and the union otherwise. Total employment at the yard dropped by about 1,400. And the yard was, as one official put it, "crying for compliance."

An amended supplemental agreement was worked out, but the union refused to give its assent unless it received a clause protecting nonaffected class members. ADDSCO deemed this to be a featherbedding demand and accordingly rejected it. The result was that ADDSCO and Maritime Administration personnel attempted to draft yet another document.

A second amended supplemental agreement was drafted and accepted by the company and the union on February 23, 1972. However, the company and the Maritime Administration entered into an agreement on March 15, 1972 that incorporated and modified the February 23, 1972 agreement. The modification involved the use of carry-forward seniority for members of the affected class. The union objected to this part of the package and, on April 4, 1972, filed suit charging the company with breach of contract. In the fall of 1972, the suit was amended to add as defendants the Secretary of Labor and Secretary of Commerce, who had (and have) responsibility for enforcing Executive Order 11246.

Meanwhile, workers at the yard had filed charges with the EEOC, which bundled 43 charges and asked for a conciliation conference. This began prior to the acceptance of the Maritime Administration package in March 1972 and continued afterward. On December 12, 1972, the company and EEOC disposed of the 43 charges with a conciliation agreement which incorporated the March 15, 1972 Maritime Administration settlement, added backpay for some charging parties, and gave preference for some jobs to members of the affected class over certain people who, under the Maritime Administration agreement, would have had priority over members of the affected class. The union there-upon added the EEOC as a defendant to the breach of contract suit. The general counsel for EEOC responded by filing a separate suit, under the authority of the 1972 amendments, against Local 18.

Neither the hearing nor the breach of contract trial took place. All parties worked out a consent decree, filed December 27, 1973, that had several parts: (1) the second amended supplemental agreement, (2) the Maritime Administration settlement, (3) the EEOC-ADDSCO conciliation agreement, and (4) two appendices that specified some limited protection for nonmembers of the affected class who might suffer "economic harm" as a result of the Maritime Administration and EEOC agreements. Also, the EEOC dropped its lawsuit against the union and ADDSCO agreed to pay the union's legal costs.

The Affected Class Settlement

The affected class settlement flows from three documents: (1) the second amended supplemental agreement, (2) the Maritime Administration agreement of March 15, 1972, and (3) parts of the EEOC conciliation agreement. One can evaluate the movement or nonmovement of the members of the affected class by examining Tables 28 and 29. The class was composed of 304 black employees hired prior to July 1, 1966 into 18 different occupations. Relief was provided in one of two forms: (1) a promotion program and (2) the handyman program.

ADDSCO had denied blacks promotional opportunities in some departments and jobs in other departments. They agreed to examine the qualifications of the members where they were working. A total of 37 employees had been promoted under this program by the end of 1974. Ten members of the affected class were permanent foremen in their original departments. Twenty-seven had received promotions to mechanic, groundsman, material checker, and other titles, all in the original departments of the members of the affected class; wages were not red-circled.

The handyman program was basically an on-the-job training program for members of the affected class. In most cases the handyman was slotted between helper and third class mechanic job titles. In some cases there were no helpers in a department and the handyman was slotted in at the bottom of the line. The handyman title was broken into two parts: first class and second class. The agreement specified that the affected class member would work 720 hours in each part; and, if qualified, be promoted to third-class mechanic at the end of 1,440 hours. A provision was made for a transferee who failed to qualify for third-class mechanic status but wished to remain in the new department as a helper with yard seniority, if he were so qualified. For 20 workers, some kind of upgrading resulted from the program (see Table 28). Five transferrees remained in the training phase of the program. Everyone who moved under the handyman program did so with a red-circled rate. However, the red-circle rate was limited to the rate paid the top nonsupervisory employee in the line for which the employee trained.

A high proportion of the affected class did not move initially or failed to move for one reason or another after first indicating a preference for movement. If we assume that the six people still in training are successful, 68 of the 304 (or 22 percent) in the affected class benefited from the program. As shown in Table 29 more than half of the affected class declined to exercise their option to move.

Table 28

Current Status of Members of the Affected Class Who Moved

September 1974

New Jobs	Promotion Program[a]	Handyman Program
Permanent Foreman	10	
Mechanic (Including Groundsmen, Material Checkers, etc.)	27	20
Helpers		5
Handyman (Currently in training)		6
TOTALS	37	31 = 68

Source: Report on Maritime Administration Settlement dated September 17, 1974.

[a] Those who benefited from the promotion program remained in their original department.

Table 29

Disposition of Members of the Affected Class Who Did Not Move

September 1974

Reason	Numbers
Declined to exercise option to move	156
Declined to move after first expressing a preference to move	18
Disqualified or voluntarily dropped out after starting training	6
Disqualified by company before starting training	2
Did not participate: terminated, deceased or retired	54
TOTAL	236

SOURCE: Report on the Maritime Administration Settlement dated September 17, 1974.

The Overall Magnitude of Recent Change

Table 30 gives the standard breakdown by race and sex for nine job titles used by both the OFCC and the EEOC. In 1964 ADDSCO presents the picture of a near classic discriminator. For instance, every official, manager, professional, and technician was a white male. Every laborer was a black male. Every black female was a maid. However, in 1964 the yard had two female journeymen mechanics. While blacks held only 22 percent of the jobs at ADDSCO in 1964, they comprised 30 percent of the population of the Mobile SMSA, and nearly 25 percent of the civilian labor force.

Between 1964 and 1970 (see Table 31) the volume of employment at the yard shot up by some 1,400 employees and it appears that most of this came between 1969 and 1970. There were some token changes in the upper echelons. Eight blacks were officials, managers, professionals, and technicians, and three female blacks were in the office and clerical category (see Table 32). By 1970, the formerly all-black male laborer category was integrated by the addition of 35 white males, but the unit remained an all-male preserve.

It is interesting to note that while the black participation rate stayed almost level between 1969 and 1970, a period of increasing employment, the same rate actually increased in the context of declining employment at the yard between 1970 and 1973 (see Tables 31 and 32).

It is likely that these changes reflect a growing uneasiness by the union and company about the pattern of past placement on grounds of race. This general uneasiness, it appears, was replaced by genuine concern in the period following 1970. The evidence supporting the contention that the yard made an effort to comply with EEO directives includes three points: (1) the color content of new hires between 1970 and 1974 and of recent promotions into all classes of the mechanic title; (2) the number of women in blue-collar occupations, and (3) the number of black foremen in several departments.

TABLE 30

Modified EEO-1 Form
ADDSCO, 1964

Job Titles	Total Employment	Males		Females	
		Total	Blacks	Total	Blacks
Officials and managers	31	31	0	0	0
Professionals	35	35	0	0	0
Technicians	73	73	0	0	0
Office and clerical	109	45	6	64	0
Sales	1	1	0	0	0
Journeymen and mechanics	1,519	1,517	162	2	0
Semiskilled	676	676	290	0	0
Laborers	124	124	124	0	0
Service workers	42	36	3	6	6
Totals	2,610	2,538	585	72	6

Source: SF 41, Part I, Section E dated October 27, 1964.

TABLE 31

Modified EEO-1 Form
ADDSCO 1970

Job Titles	Total Employment	Males		Females	
		Total	Blacks	Total	Blacks
Officials and managers	102	101	2	1	0
Professionals	90	81	4	9	0
Technicians	36	32	2	4	1
Sales	1	1	0	0	0
Office and clerical	165	86	2	79	8
Craftsmen	2,591	2,591	418	0	0
Operatives	876	876	338	0	0
Laborers	203	203	168	0	0
Service workers	42	36	11	6	6
Totals	4,106	4,007	945[a]	99	15[a]
Previous year's totals	2,757	2,644	659[b]	93	11[b]

Source: Payroll for ADDSCO. April 16, 1970.

a/ Black participation rate for 1970 = 23.4%.

b/ Black participarion rate for 1969 = 24.3%.

TABLE 32

Modified EEO-1 Form
ADDSCO, 1973

Job Titles	Total Employment	Males		Females	
		Total	Blacks	Total	Black
Officials and managers	77	75	1	2	0
Professionals	71	67	7	4	0
Technicians	33	27	3	6	1
Sales	1	1	0	0	0
Office and clerical	108	48	5	60	7
Craftsmen	1,536	1,530	333	6	4
Operatives	510	510	280	0	0
Laborers	261	261	202	0	0
Service workers	44	40	14	4	4
Totals	2,641	2,559	845 [a]	82	16

Source: EEO-1 form dated March 5, 1973.

a/ Black participation rate for 1973 = 32.6%.

Table 33

MODIFIED EEO-1 FORM
ADDSCO, 1974

Job Titles	Total Employment	Males Total	Males Blacks	Females Total	Females Blacks
Officials and managers	75	73	1	2	0
Professionals	76	68	4	8	0
Technicians	41	35	3	6	1
Sales	1	1	0	0	0
Office and Clerical	120	51	5	69	9
Craftsmen	1,747	1,736	385	11	5
Operatives	632	628	339	4	2
Laborers	200	200	166	0	0
Service Workers	42	36	14	6	6
TOTALS:	2,934	2,829	917	105	23

SOURCE: EEO-1 Form dated January 17, 1974.

The data in Table 34 require elucidation on one key point. ADDSCO is a repair yard, and as such has considerable call-in/layoff activity. Further, the data put together in Table 34 represent new hires and recalls. It is axiomatic among civil rights enforcement experts that recruitment from the same pool that produced discriminatory patterns earlier is suspect, if not illegal. One official at the yard indicated that "fully eighty percent of our new hires (and recalls) on a monthly basis are former employees." That would suggest that a past pattern would be perpetuated. Hence, it is comforting to study the changes between 1970 and 1974 and note that change is toward a higher black content. Further, the reader is reminded that the data in Table 34 are for mechanics only. This experience has to be labelled an example of affirmative recruitment, even if the 80 percent figure alluded to earlier would have augured otherwise.

If the recent hiring pattern suggests that the yard can and does find blacks to bring in under craft titles, it is also true that the recent promotion experience in blue-collar departments shows that "blacks are in the pipeline." Table 35 details the experience of the yard for calendar year 1972. As one would expect, given the history of race relations in the yard and in Mobile, the lower the title the higher the proportion of the jobs held by blacks. Nonetheless, these data indicate that blacks are moving up through the system.

The introduction of women into blue-collar work in shipyards has not been of a magnitude that would cause it to be called revolutionary, to put it mildly. However, by 1974 women held jobs as operatives and craftsmen, but not as laborers. Although the numbers are small, these women represent a breakthrough, accomplished despite male resistance. The facts at ADDSCO prove that women can be hired into blue-collar jobs and be promoted in them.

In years gone by, blacks held some foreman jobs in all-black units. However, not all totally black units had black foremen. It was charged initially that ADDSCO had a general policy of placing white supervisors, in the hourly paid permanent foreman categories, over some all-black units. The yard had 13 black foremen in three departments in 1968 and 25 in 12 departments in 1974.

TABLE 34

Employment of Mechanics by Race
ADDSCO, 1970 and 1973

	1970					1973				
Job Title	Total	Black	White	Percent Black	Percent White	Total	Black	White	Percent Black	Percent White
First-class Mechanics	593	19	574	3.20	96.80	374	26	348	6.95	93.05
Second-class Mechanics	643	44	599	6.84	93.16	388	78	310	20.10	79.90
Third-class Mechanics	1,314	95	1,219	7.23	92.77	601	174	427	28.95	71.05
Total Mechanics	2,550	158	2,392	6.20	93.80	1,363	278	1,085	20.40	79.60

SOURCE: Hiring Reports, ADDSCO.

TABLE 35

Promotions Among Mechanics by Race: ADDSCO 1972

Job Title	Total	White	Black	Percent Black	Percent White
First Class Mechanics	47	40	7	15.00	85.00
Second Class Mechanics	73	35	28	38.36	61.64
Third Class Mechanics	11	6	5	45.45	54.55
All Mechanics	121	81	40	33.06	66.94

SOURCE: Document provided by ADDSCO.

The rate of black participation in the work force at the yard changed from 23 percent in 1970 to 31 percent in 1974. Further, the proportion of black craftsmen increased from 15 percent in 1970 to 22 percent in 1974. Thus, we can conclude that participation by blacks in the work force at ADDSCO was no longer a problem by 1974. In the blue-collar area, black mechanics were found in increasing percentages among promotions and new hires and recalls. And an increasing number of departments were promoting blacks to the permanent foreman level. In the white-collar area, there were breakthroughs that differentiate the present from the not-so-distant past, but not much numerical progress has been made in those jobs.

Concluding Remarks and Summary

As noted earlier, shortly after the passage of the 1964 Civil Rights Act, both the union and the company began to show some uneasiness about the yard's past practices. One manifestation of this was the establishment of a ten-member Bi-Racial Committee, half from management and half from the local union. All five of the management members come from the Industrial Relations Department and the director of industrial relations is the chief of the management delegation. The union specifies that its two ranking officers, the president and executive-secretary, are exofficio members of the committee; the executive-secretary of the union is the ranking member of the union delegation, and the three remaining members are black.

The management view of the Bi-Racial Committee is that it was established, at management's suggestion, to give blacks a voice that they had not had in the past. The union version is that the committee was established at union insistence in order to produce harmony among the races. The committee meets once a month, and the sessions generally run over an hour's length. There is fairly common agreement among all parties that the committee does not have much of a work load. Management contends that the largest amount of work that comes before it has to do with dissatisfaction with an employee's current grade level. This is not properly an EEO matter unless race or sex is a factor, and this is rarely the case. Union officials view the low work load as evidence of no real race problem in the yard. Outside civil rights spokesmen, and some black members of Local 18, see its work load as evidence of the committee's lack of power. Some issues are resolved, but complaints regularly bypass the committee and are sent to the EEOC or the Office of Civil Rights for the Maritime Administration in New Orleans. This committee apparently has achieved the status that many observers attribute to the United Nations: its successes are hard to come by, but its promise is such that few are willing to recommend its abolition.

ADDSCO provides very little formal training for its potential or current employees. There are some formal training courses in crafts such as sheet metal, boilermaker, and machinist on the ADDSCO facility but on the employee's or potential employee's own time. The yard does the overwhelming portion of its training on the job. This was the case in the affected class settlement. The agreement specified that a member of the affected class could receive 1,440 hours of training in the handyman program.

The NAACP and the Non-Partisan Voters League, both headquartered in Mobile, have been active in the cause of equal rights at the yard. Mostly they have helped individual workers or potential workers find a way to file grievances with government agencies. These organizations have publicized what they discern as the malpractices of the yard. However, budgetary limitations have precluded their having much of a voice.

This evaluation of the efficacy of the federal government's enforcement in the area of employment discrimination at ADDSCO is divided into three parts: (1) the role of local labor market pressures, (2) the relationship between the affected class settlement and the pattern of overall change, and (3) the power of the federal government in the shipbuilding and ship repair industry, with special emphasis on its ability to impose sanctions under the authority of Executive Order 11246.

Any study of anti-discrimination employment enforcement requires an examination of local labor market pressures. As noted earlier, ship repair does not offer pleasant working conditions. Rather, the work is heavy, hot, dirty, and exposed to all kinds of weather. There was some slack in the local labor market in that the rate of unemployment in the Mobile SMSA fluctuated about the 5 percent mark all through the time the negotiations over the details of the agreement were being worked out. However, entrance standards also were relaxed. For instance, the yard is not concerned about arrest records. Further, convictions by themselves do not disqualify a potential shipbuilder. Hence, narcotics offenders and people convicted of burglary and armed robbery may be hired. One could argue that this is a practice that offers the person who has gone wrong another chance. It is more likely that the relaxation has to do with the search for bodies to perform the work at the yard. In our view, the labor market was a bit tighter for ADDSCO, because of the nature of ship repair work, than it was for most employers in the Mobile SMSA. We do not see that labor market tightness can be a reason for the upgrading of black employees and the hiring of females in blue-collar occupations at the yard, though it may well have something to do with the increase in numbers over the recent decade.

Even a cursory comparison of the results of the affected class settlement and the change in the yard's work force over the decade between 1964 and 1974 (particularly between 1970 and 1974) reveals that there is no numerical relationship. Some 62 persons have benefited directly from the affected class settlement in an installation that has some 950 black employees. Hence, the government's efforts clearly show a positive effect on the entire personnel operation of the installation. The changes in the work force since 1970 indicate successful government enforcement efforts.

The federal government is heavily involved in the shipbuilding and ship repair industry. ADDSCO's major shipbuilding contracts in recent years have come from the Navy, and the company has done considerably more work, on a dollar volume basis, on ship repair. This gives the federal government considerable leverage. Some government contractors are in a position to say that they do not need federal contracts, but shipbuilders are not among them. The other element in the equation is the willingness of the monitoring agency, in this case the Department of Commerce, to issue sanctions. More than that, government administrators had the results of excellent staff field work in the Office of Civil Rights of Maritime Administration. There was no weak link from on-site staff work to the Assistant Secretary of Commerce who issued the sanctions against ADDSCO.

Finally, with respect to the roles of the various actors in this drama, initial discussions with Maritime Administration representatives began in the spring of 1970 and culminated in December 1972. However, the case continued until the union breach-of-contract suit was settled by the December 1973 consent decree.

The role of the federal government, its imposition of sanctions, appears as the dominant force. Management needed work, and they finally agreed to change the collective bargaining contract unilaterally. Black workers in the yard had some minor assistance from the two local civil rights organizations, but their case was carried by officials in the Maritime Administration and EEOC. The workers' only organized resistance to federal directives was through their union, which resisted to the last, even though the federal pressure cost the union money and time and the leadership was acutely aware of the outlay. Union intransigence went beyond the state of race relations in Mobile, Alabama. The unit seniority system was designed to protect employment rights of long service employees along narrow craft lines. The government attacked a raison d'etre of the union. To do this in the context of race relations in Southern Alabama guaranteed a fight.

V. TODD AND LOCKHEED IN SEATTLE

Seattle, Washington has become known nationally as the city that best exemplifies the plight that follows dependence on the federal defense budget. The city experienced an outsized unemployment rate between the late 1960s and 1974, resulting mainly from the decline in the aerospace industry, especially the Boeing operation in Seattle. Seattle's private shipbuilding and ship repair industry has also experienced hard times.

Actors and Environment

There is a limited cast of characters in this case: the managements of the two yards, a Metal Trades Council comprised of eleven unions, the Seattle Opportunities Industrialization Council, and the Office of Civil Rights in the Maritime Administration.

The Seattle labor market showed high unemployment throughout this case. For example, early in 1971 the unemployment rate for King County (the Seattle SMSA) was 13 percent and the nonwhite unemployment rate was approximately 18 percent. The situation improved after 1971, but the area remained one of excess labor supply (see Table 36).

The 1970 minority population in King County was about 7 percent, split in half between blacks and Spanish-surnamed Americans, Asians, and American Indians. Blacks constituted about 7 percent of Seattle's population and the three other groups about 5.5 percent.

The actors in this case operated against a backdrop of the depressed Seattle economy and the erratic nature of shipbuilding and ship repair employment (see Table 37). Within 37 months, from April 1971 to May 1974, the total volume of employment doubled at the Todd yard, fell by nearly 90 percent, and moved back to about 80 percent of its peak employment. The Lockheed yard recorded a high of 4,400 employees in 1967, which subsequently fell to 1,500 by 1972 (see Table 38).

Table 36

Population and Employment in the Seattle SMSA 1970-1973

Series	Years			
	1970	1971	1972	1973
Population	1,424,611	1,432,800	1,411,900	1,409,400
Civilian labor force	640,500	633,900	630,500	644,200
Employment	579,000	550,900	567,400	595,400
Unemployment rate (%)	9.5	13.0	9.9	7.6

SOURCE: Employment Security Department, State of Washington Annual Manpower Planning Report 1974, Seattle-Everett Washington Area.

Table 37

Total Employment at Todd-Seattle

Date	Total Employment
October 1969	3,421
April 1971	1,145
May 1972	2,222
April 1973	558
July 1973	250
May 1974	1,830

Source: Compliance Reviews, 1969-1974

Table 38

Employment Levels at Lockheed-Seattle
Selected Years

Year	Level of Employment
1966	4,276
1967	4,398
1969	3,782
1970	3,957
1971	2,367
1972	1,500
1973	1,737
January 1974	1,939

SOURCE: Compliance Review Reports, various years, Office of Civil Rights, Maritime Administration.

With economic conditions like these, OCR officials focused on retention of minorities and females. Management suggested that part of their troubles stemmed from competition for skilled labor from construction and manufacturing industries. Perhaps, but with a loose local labor market, it is difficult to take this caveat very seriously. Construction wage rates are higher than those of shipyards -- the Seattle yards were no different in this respect from any other shipbuilder.

In addition to the different employment situation confronting these yards as contrasted with the three previously discussed cases, another important difference was that neither of the Seattle yards experienced an affected class settlement. It is therefore instructive to examine the impact of continuing surveillance by the Equal Opportunity Specialist (EOS) in the OCR in the Seattle branch of the Maritime Administration under these differing conditions.

This can be done by combining statistical materials with compliance review reports. Responses to compliance reviews, often in the form of amended AAP, constitute another example of out-of-court settlements. If no case can be made for an affected class settlement, the OCR has to depend on regular compliance reviews to produce change. However, at the Lockheed yard it appears that the EOS chose not to press for an affected class settlement even though a case could be made for one.

Continuing Surveillance - the Todd Yard

As can be seen from Tables 39 and 40 from April 1971 to May 1974, the total employment moved from 1,145 to 1,830 and in-between these two observations, employment increased to 2,222 by May 1972 and fell to a low of 250 by July 1973. Totals and percentages for females are shown in Table 41. During this period, minorities increased their employment percentage at Todd from more than 9 to a little over 11 (see Table 42.) Hence, there has been no argument about Todd meeting the standard OFCC benchmark of employing minorities

TABLE 39

Composition of the Workforce by Sex, Race/Ethnic Group at the Todd-Seattle Shipyard, April 1971 and Occupational Category

Occupations	Male Employees					Female Employees					Total All Employees
	Total Males	Minority Groups				Total Females	Minority Groups				
		Negro	Oriental	American Indian	Spanish American		Negro	Oriental	American Indian	Spanish American	
Officials and Managers	71	--	--	--	--	1	--	--	--	--	72
Professionals	66	1	--	--	--	2	--	--	--	--	68
Technicians	37	2	--	--	--	7	1	--	--	--	44
Sales Workers	1	--	--	--	--	--	--	--	--	--	1
Office and Clerical	26	4	2	--	--	40	1	--	--	--	66
Sub-total (White Collar)	201	7	2	--	--	50	2	--	--	--	251
Craftsmen (Skilled)	629	12	8	4	4	--	--	--	--	--	629
Operatives (Semi skilled)	157	6	2	4	6	--	--	--	--	--	157
Laborers (Unskilled)	108	39	8	--	4	--	--	--	--	--	108
Service Workers	0	--	--	--	--	--	--	--	--	--	0
Sub-total (Blue Collar)	894	57	18	6	14	--	--	--	--	--	894
Total	1095	64	20	8	14	50	2	--	--	--	1145

SOURCE: EEO-1 report for 1971 from Todd Shipyard.

TABLE 40

Composition of the Workforce by Sex, Racial/Ethnic Group and Occupational Category at the Todd-Seattle Shipyard, May 1974

	Male Employees					Female Employees					
		Minority Groups					Minority Groups				
Occupations	Total Males	Negro	Oriental	American Indian	Spanish American	Total Females	Negro	Oriental	American Indian	Spanish American	Total All Employees
Officials and Managers	71	1	1	1	--	1	--	--	--	--	72
Professionals	48	1	1	--	--	0	--	--	--	--	48
Technicians	59	3	--	--	--	11	2	--	--	--	70
Sales Workers	1	--	--	--	--	0	--	--	--	--	1
Office and Clerical	16	1	--	--	--	34	1	--	--	--	50
Sub-total (White collar)	195	6	2	1	0	46	3	0	0	0	241
Craftsmen (Skilled)	1444	47	27	23	27	9	--	--	--	--	1453
Operatives (Semi skilled)	39	[illegible]	0	1	1	0	--	--	--	--	39
Laborers (Unskilled)	82	52	5	1	4	8	2	--	--	--	90
Service Workers	7	3	0	0	0	0	--	--	--	--	7
Sub-total (Blue collar)	1572	103	32	25	32	17	2	0	0	0	1589
Total	1767	109	34	26	32	63	5	0	0	0	1830

SOURCE: EEO-1 report for 1974 from Todd Shipyard.

Table 41

TODD-SEATTLE

1971-1974 COMPARISONS: Females to Total

Year	Total Employment	Total Female Employment	Female/ Total	Craft			Clerical			3 Top Jobs		
				F[a]	t[a]	F/t %	F	T	F/t %	F	T	F/T %
1971	1145	50	4.36%	0	629		40	66	61%	10	184	5
1974	1830	63	3.44	9	1453	.01	34	50	68	12	190	6

Source: EEO-1 forms for 1971 and 1974.

a/ F = female and T = total.

b/ Three top jobs: officials and managers, professionals, and technicians.

Table 42

TODD-Seattle
1971-1974 Comparisons: Minorities to Total

	Total Employment	Total Minority Employment	Minority Total %	Craft			Clerical			3 Top Jobs		
				Min.	Total	M/t %	M	T	m/t	M	T	m/t
1971	1,145	108	9.42	28	629	4.4	7	66	10.6	4	184	2.2
1974	1,830	206	11.26	124	1453	8.0	2	50	4.0	10	190	5.3

Source: EEO-1 forms for 1971 and 1974.

[a] Min = M = Minority.

[b] t = Total.

[c] Three top jobs: officials and managers, professionals, and technicians.

commensurate with their percentage in the local labor market, which in the Seattle SMSA is slightly over 7 percent. Minority craftsmen jumped from 28 to 124 as the total number of craftsmen moved from 629 to 1,453. This represented a change from 4.4 to 8 percent. Clerical jobs fell from 66 to 50 during a tremendous expansion in employment, resulting in a disproportionate decline in minority clericals from seven to two jobs. In the top three jobs -- officials and managers, professionals, and technicians -- the percentage of minorities increased from 2.2 to 5.3 (an increase in absolute numbers from 4 to 10). To summarize, there was a small increase in the overall participation of minorities, a near doubling of their craft positions, a loss of five clerical jobs and an increase from 4 to 10 jobs in the top three occupational categories.

Even in a period of decline, a firm may be hiring new employees. Between October 1969 and April 1971, employment at the yard declined from 3,421 to 1,145, but there were some 471 new hires in nine craft and five laborer classifications between March 1, 1970 and March 1, 1971. About a fourth (24 percent) of these hires were minorities, but some 94 percent of this group were in semiskilled or unskilled categories.

Compliance reviews were conducted by an EOS stationed in Seattle. The EOS found the yard to be in noncompliance from October 1969 through March 1971, but this did not lead to any sanctions. Work began declining in early 1970, and after the 1969 review found the yard in a state of noncompliance, a revised AAP was required. By the time this document was accepted by Maritime Administration on June 22, 1970, employment at the yard was in a down-swing, with no end in sight.

The EOS and his supervisor in the San Francisco regional office sensed the ludicrousness of expecting the yard to fulfill its goals and timetables. However, as pointed out previously, there were still some new hires. By 1973, the San Francisco regional office had ceased to worry about Todd's EEO stance because of the continuing deteriorating economic situation there. However, employment has increased to roughly 1,800 by the time the EOS conducted another review in May 1974.

This layoff/recall activity had important implications for minority employment. The yard's personnel policy gave employees call-back rights if they worked 260 days consecutively in the three years immediately prior to layoff. The erratic nature of Todd's business therefore precluded many employees from gaining recall rights. However, an employee could have what amounted to recall rights by virtue of union membership. The collective bargaining agreement has a clause requiring the yard to give the 11 unions 48 hours to find a qualified applicant to fill an opening. This procedure is so ingrained in the personnel process that manifestations of it show up in the AAP. Indeed, the revised AAP submitted in May 1973 reads as though it came from union officials. This tight control by the unions puts them in the position of being able to determine the effectiveness of achieving the aims spelled out in Todd's AAP.

Both the recall procedure and union referral procedure might tend to perpetuate past color and sex hiring practices into the future. In order to discover why this has not happened, it is necessary to examine the compliance review that took place in May 1974.

By May 1974, the minority participation rate was up about 1.8 percentage points and the rate for females was down about a point. The EOS reasoned that the yard deserved to be held in compliance because it had placed females and minorities in nontraditional jobs and was making good faith efforts to implement its AAP. The company had some problems, but the EOS felt that the recent record indicated a willingness, especially in its current economic context, to take affirmative action.

Continuing Surveillance - Lockheed

From March 1970 to March 1974, the overall level of employment at Lockheed declined from a high of roughly 4,000 to a low of 1,500 and then increased to 2,100 (see Table 43). The participation rate for all minorities fluctuated from a low of around 11 percent to a high of 15 percent. Minorities consistently held about 14 percent of the represented craft

Table 43

Minority Participation Rates
Lockheed-Seattle

Year	Number Employees	Black	S.S.A.	Other	Total Minority	Percent
March 1970	3,957	354	43	95	492	12.4
May 1971	2,367	254	27	55	336	14.1
May 1972	1,500	123	19	32	174	11.6
May 1973	1,737	128	23	59	210	12.1
March 1974	2,161	211	34	86	331	15.3

SOURCE: Compliance Review Report, 1974.

employees, a title which includes all blue-collar jobs; in 1974, minorities held 17 percent of these jobs (see Table 44).

Throughout this four-year period, minorities represented 6 to 9 percent of the white-collar workers who are on hourly pay scales and not represented by unions (see Table 45). Minorities have never represented more than ten of the top three classifications, salaried nonrepresented jobs, or about 3 percent of the jobs (see Table 46).

The EOS in Seattle has understandably been concerned about the retention of minority and female percentages throughout this period of economic distress. The EOS and company personnel officials had an understanding that when business improved, goals and timetables would be revised, with concentrated effort on those areas where the yard is deficient.

Since the data encompass the period March 1970 and March 1974, it is appropriate to compare the compliance reviews conducted in May 1969 and in January 1974. (The completion of the latter review was delayed because of OCR dissatisfaction that led to some revisions in Lockheed's AAP.)

The conclusion of the 1969 review was that the contractor "was in a state of noncompliance, but contract awardable." This curious finding meant that the contractor had serious deficiencies, but that agreement had been reached on what remedies were necessary and the OCR accepted the agreement as having been struck in good faith. Many of the deficiencies were similar to those in most situations -- minorities and women held few of the better-paying, higher skilled jobs.

However, the EOS also was concerned about the existence of an affected class. It is of interest because the OCR attempted to eliminate this violation by constant surveillance instead of the affected class settlement remedy sought elsewhere. The reasons for this choice are not entirely clear, but the fact that the limited resources and energy of OCR were tied up in affected class settlements in the East and Gulf coast, plus the worsening economic situation for Lockheed undoubtedly were important.

Table 44

Represented Craft Employees, Minorities and Total, Lockheed-Seattle

Year	Number Employees	Black	S.S.A.	Other	Total Minority	Percent
March 1970	3,251	339	39	75	453	13.9
May 1971	1,965	248	24	46	318	16.2
May 1972	1,096	120	15	20	155	14.1
May 1973	1,380	124	20	50	194	14.1
March 1974	1,819	206	29	76	311	17.1

SOURCE: Compliance Review Report, 1974

Table 45

Hourly Non-Represented Employees
Lockheed-Seattle

Year	Number Employees	Black	S.S.A.	Other	Total Minority	Percent
March 1970	356	11	2	16	29	8.1
May 1971	174	4	1	6	11	6.3
May 1972	171	3	2	8	12	7.0
May 1973	154	3	2	5	10	6.5
March 1974	148	5	2	7	14	9.5

SOURCE: Compliance Review Report, 1974.

Table 46

Salaried Non-Represented Employees

Year	Number Employees	Black	S.S.A.	Other	Total Minority	Percent
March 1970	350	4	2	4	10	2.8
May 1971	228	2	2	3	7	3.1
May 1972	233	1	2	4	7	3.0
May 1973	203	1	1	4	6	3.0
March 1974	194	-	3	3	6	3.1

SOURCE: Compliance Review Report, 1974.

The affected class was composed of blacks who worked as scalers belonging to a separate laborers union, one of the eleven unions comprising the Metal Trades Council. The scaler's job is hard, dirty, low-status work. Through a combination of black preference and company policies, blacks represented over 90 percent of the scalers unit by the time of the 1969 compliance review. This situation was perpetuated by the transfer provisions in the company's agreement with the Metal Trades Council and the small wage differences between scalers and other jobs.

The collective agreement specified that an employee gained seniority in an LOP covered by a constituent union in the Metal Trades Council. A member of one union may work in another line and hold memberships in two locals, but there is no provision for carry-forward seniority. This acts as a disincentive to mobility, a disincentive augmented by the small economic gain to be made by transferring. For instance, the hourly wage difference between the scaler's and journeyman's pay was 13 cents in 1969 and 14 cents in 1974. This kind of wage leveling has had the same disincentive effect in other yards.

The OCR asked Lockheed to pursue imaginative solutions to this situation. However, the volume of orders declined before anything substantive was achieved, and the OCR turned its attention to retention. The company continued to be classed as contract-awardable even if it fared poorly in terms of its AAP.

In the 1974 compliance review, the OCR discerned no change in the collective bargaining agreement, but held that none of the unions applied the agreement differently to minorities or women than to white males and the company could not be faulted with respect to its retention efforts (see Tables 44 through 46). Further, the color content of the scalers unit changed some by the inclusion of more non-minorities into that unit. Movement by blacks out of the unit has been minimal, and the increases in minority membership in other unions has benefited young minorities.

Many of the problems remain at Lockheed, though the number of blue-collar units with few minorities has been reduced. Progress has been understandably slow, given the economic situation. However, the upswing in business in 1974 was accompanied by some progress for equal opportunity at Lockheed (see especially Table 47).

Remaining Issues at Todd and Lockheed

A discussion of three other issues will complete the analysis of the Seattle Experience: (1) the status of women, (2) the Seattle Opportunities Industrialization Council (SOIC), and (3) the Local 86 case. 24/

The big issue with respect to women, though this is hardly confined to shipyards, has been their employment in nontraditional jobs. Women have participated in blue-collar work under the impetus of the Civil Rights Act and EO 11375, although such employment often has been on a token basis, and the Seattle yards are cases in point. At Todd, when the work force increased by 62 percent, the employment of women increased from 50 to 63, so their participation rate declined from 4.4 percent to 3.4 percent (see Tables 39 and 40). At the same time, nine nonminority women were hired in craft jobs. The number of women in the top three jobs changed from 10 to 12; but most of these were technicians, not managers, officials, or professionals. To summarize, Todd experienced an overall decline with a breakthrough into craft jobs. The percentage of women employed at Lockheed was low, but steady, between 1970 and 1974 (see Table 48). However, in 1974 the companies and the Metal Trades Council were attempting, belatedly, to hire women in the skilled crafts. Progress has been minimal, but a breakthrough has occurred. More progress can be expected as employment increases in the Seattle yards.

The SOIC has been a successful contractor in training aspiring shipbuilders as welders for Lockheed. The company and SOIC contracted twice for 60 welders to be trained by SOIC; the contract provides for SOIC to be paid more the

Table 47

Minority Participation in Selected Crafts
Lockheed-Seattle

Crafts	1972 Total	1972 Minority	1972 Percent	1973 Total	1973 Minority	1973 Percent	1974 Total	1974 Minority	1974 Percent
Pipefitters	67	5	7.5	122	10	8.2	205	18	8.8
Sheet Metal	52	1	1.9	94	5	5.3	134	10	7.5
Welders	225	33	14.7	371	68	18.3	454	96	21.1

For the second consecutive year an increase is noted in three of the major craft areas. Not indicated in the above figures is the employment of the first female in the Machinist Trade in the Tool Room/Repair classification.

SOURCE: Compliance Review Report, 1974.

For the second consecutive year an increase is noted in three of the major craft areas. Not indicated in the above figures is the employment of the first female in the machinist trade in the tool room/repair classification.

Table 48

Female Employees: Total and Minority
Lockheed-Seattle

Year	Number Employees	Caucasian	Black	S.S.A.	Other	Percent of Work Force	Percent Minority
March 1970	153	140	3	2	8	3.8	2.0
May 1971	82	77	2	0	3	3.4	6.1
May 1972	73	68	1	0	4	4.8	6.8
May 1973	63	58	2	1	2	3.6	7.9
March 1974	77	66	5	1	5	3.6	14.3

SOURCE: Compliance Review Report, 1974.

longer its placements stay with the shipyard. By the end of the second contract, SOIC had placed over 100 welders at the facility. More than 20 percent of welders were minorities and six were women.

The celebrated Ironworkers, Local 86 case had an upsetting effect on Todd and Lockheed because that part of the remedy giving black journeymen preferential referral treatment to construction jobs caused the yards to lose black employees to the construction industry.

Summary

The distinguishing characteristics of the Todd and Lockheed cases were the lack of drama and the effects of adverse economic conditions. The economic situation was the main determinant of the outcome in these cases. Economic conditions meant that the companies were trying to hold on, the unions were attempting to do the best they could for their members, and the OCR was preoccupied with retention of women and minorities.

The absence of an affected class settlement at Lockheed was due to the demands already made on the OCR's resources by the affected class settlements on the East and Gulf coasts. However, economic conditions alone were sufficient to justify the OCR's decision not to intervene on the ground that a settlement probably would not have produced much change. Since it had no complaints on the question, the OCR decided to use a strategy of continuing surveillance.

The overall participation rate by minorities at the yard has not been a problem. Most of the effort generated by the EOS concerned imbalances of minority and females by department, and some improvement was achieved in this area in both yards. Women were placed in nontraditional jobs, but only on a token basis. Minorities also increased their participation in the crafts, which could be accelerated as a result of a recent training agreement between the yards and the Metal Trades Council. Finally, the affected class situation at Lockheed has not been settled, even though nonwhites were added to the scalers unit.

The affected class situation is not likely to be settled without a Title VII lawsuit or the use of sanctions under the Executive Order. Union leadership is not likely to risk such a move on its own initiative, and Lockheed has made it clear that it has no interest in effecting a unilateral change in seniority.

It hardly comes as a surprise that little could be done for EEO, except by emphasis on retention, in the face of declining employment. The most that OCR could have done, besides its emphasis on retention, was to prepare for the future. Except for prescribing the standard remedy for an affected class situation, they have done that.

VI. CONCLUSIONS

This study of employment patterns in the shipbuilding and ship repair industry is primarily an evaluation of the effectiveness of the enforcement mechanisms used by the Office of Civil Rights in the Maritime Administration of the Department of Commerce, under the aegis of the Office of Federal Contract Compliance in the Department of Labor. A major conclusion of this study is that the Office of Civil Rights has been most effective in those yards where they have negotiated an affected class settlement, but there is no numerical connection between these settlements and the successful attainment of compliance. Experiencing these negotiations and implementing the settlement produced a need to revamp entire personnel systems. This revamping of personnel systems in line with the Civil Rights Act and the requirements of government contracts is the change that produced compliance. Many factors produced these successes, but the moving force was the resolve of the Maritime Administrator that the law would be enforced.

The civil rights revolution has produced some changes in industrial relations. The shipbuilding and ship repair industry has been the setting of many of these changes, hence this study encountered numerous issues common to other industries, including: (1) the quality of the civil rights enforcement efforts, (2) the impact of local labor market pressures, (3) the changing role of corporate personnel offices, (4) the role of organized labor, (5) the contribution of outreach and outreach-type agencies, (6) the placement of women in nontraditional jobs, (7) shipyards as training institutions and the use of benchmarks drawn from census data, and (8) the future of affected class settlements.

The Efficacy of the OCR

As noted previously, one of the most important factors responsible for the successes in these cases was the staff work and supervision of the Office of Civil Rights. The

Office of Civil Rights in Washington studies the latest developments in Title VII law and the consent decrees achieved by EEOC and contract compliance agencies. As Title VII settlements began to award back pay and restructure seniority systems, the OCR adopted these elements as parts of its packages used in negotiations. For instance, the early affected class settlements did not include demands for back pay for the affected class. Once OCR leadership became convinced that back pay could be won in the courts under Title VII, they added that to their package. In the Newport News affected class settlement, the members of the class were allowed to transfer to new departments, but they could not have carry-forward seniority. Later, when the issue of carry-forward seniority had been settled in the courts, the new affected class settlements included this seniority arrangement for members of the affected class. There is thus a strong suggestion that those who put their houses in order at a late date may have to settle for a broader package, a point that has not been lost on personnel officials in shipbuilding and ship repair.

In addition to using compliance reviews to effect congruence of action with the promise of AAP, the OCR has worked out an effective informal complaint procedure. Aggrieved minorities and women know that they can get a sympathetic ear in the regional offices of the Maritime Administration. Complaints are transmitted by letter or phone, or sometimes they come second-hand through a "resident radical." Each yard has a person or organization familiar with the personnel operation who often are on a first name basis with the OCR regional office staffs. Sometimes this transmitting agent is an employee of the yard, but not always. Thus, individual charges are brought informally to the attention of Equal Opportunity Specialists in the regional offices, where they are reviewed to ascertain "probable cause." The first effort toward resolution begins with attempts to get more information from the company and union (or unions) about the charge. In the main, this is done by telephone. Some cases are dismissed; that is, dropped, by the OCR when the EOS becomes convinced that there is no basis for the charge. However, in some cases, the grievance is settled over the phone. More often, the EOS accumulates these charges, gains increasing amounts of information about them, and bundles them up for the next on-site review. Toward the end of the review the EOS goes over each charge face-to-face with the "respondent." The usual procedure is to obtain an agreement, and this agreement is transmitted in the Compliance Review Report to the Senior Compliance Officer in Washington for approval. Often there is haggling back and forth about the content of the settlement, but many individual cases are handled this way. Further, it is possible that these informal charges may uncover a practice that needs to be changed as opposed to correcting an individual case of mistreatment. This procedure has the virtue of speed compared to the delay occasioned by using the slow-moving machinery of the EEOC. However, personnel officials are not likely to grant back pay in this kind of settlement. Some yards have been willing to make double promotions in lieu of back pay settlements. This procedure represents an expeditious method of resolving conflicts.

Still, the procedure has its detractors. Many union officials prefer to see a grievant file a complaint under the collective bargaining contract. Choosing one avenue, however, does not preclude use of the other. Some interviewees thought the EEOC might get back pay, but that the OCR might not go to bat for a grievant in the way that an EEOC attorney would. And the procedure carries with it the potential hazard that the OCR and the personnel officers (or union officials) may develop a personal relationship that encourages some swapping of grievances. However, this same hazard occurs under collective bargaining agreements, and despite the drawbacks, the procedure is worthy of replication.

Bargaining for affected class settlements is a grueling exercise, and requires considerable expertise. The OCR in Maritime has access to the legal staff of the Maritime Administration for this purpose. The essential ingredient in the success of this approach is support from the top. This has been forthcoming from the Maritime Administrator, who was determined to enforce the Executive Order, and the OCR staff was backed by the administrator's authority.

The Impact of Local Labor Market Conditions

One of the problems in research on the impact of civil rights enforcement efforts in employment is the difficulty of untangling the effect of local labor market conditions. For instance, it might be argued that tight labor market conditions produce higher participation rates for females and minorities. Likewise, it might be averred that the same conditions produce higher relative occupational standing for the same groups. However, as has been demonstrated in the two-volume study, Employment of Southern Blacks,[25] this is a gross oversimplification, if not just plain wrong. The conclusion from that series of studies was that tight labor market conditions could provide the setting for changing the amount of participation and relative level of occupational standing, but that tight labor markets by themselves could not produce these conditions.

The generally tight labor markets for Newport News and the two Gulf Coast yards constituted a favorable setting, especially when one considers the growing demands for employees by these three yards. Because of an historical accident, the participation rate for blacks at the Newport News yard has not been a problem. The Huntington family decided it would be that way, and the issue was settled. However, participation rates for blacks in the Gulf Coast yards ceased to be a problem after enforcement efforts were mounted under the authority of Title VII and the Executive Order. It is true, as has been pointed out, that the yards needed employees and blacks were available. One can give some credit to labor market tightness for upward changes in participation rates, but the timing is rather closely geared to the post 1964 period.

The improvement in occupational standing by blacks and the breakthrough of women into nontraditional jobs have to be attributed to the change in focus of the personnel systems of the yards. This change was wrought by enforcement efforts used by the federal government.

The Seattle yards experienced a wholly different set of economic conditions. Their volume of orders fell drastically, and they were situated in a slack labor market. There was no favorable setting for improving the status of minorities and women. However, even here there were some changes in upgrading and the placement of women in nontraditional jobs. The conclusion on labor market tightness is that tightness is a necessary but insufficient condition, even though some small progress was made in Seattle against adverse conditions.

The Changing Role of Corporate Personnel Offices

The major change has been to make company officials more conscious of EEO matters. This has several facets. The yards have expanded their recruiting efforts, especially into minority communities and through newspapers and other media that serve those communities. Screening, testing, placement, transfer, and promotion operations were restructured to emphasize a concern for all comers. Or as a cynic might put it, to avoid Title VII litigation. No matter, it has occurred. But these are not one-shot changes; personnel procedures have been reorganized so that an EEO officer has access to the decision-making process all along the way. These changes are monitored in two ways, (1) by extensive record keeping, and (2) the establishment of an accounting mechanism. By the latter we mean that the EEO operation is reviewed by a top manager at the yard. Hence, accountability is effected through a reporting mechanism that pinpoints responsibility. Further, the yards have introduced some kind of Bi-Racial Committee (these committees usually have been renamed Affirmative Action Committees under pressure for change affecting women) to handle EEO grievances inside the yards. This does not mean that all is well, rather it means that the impact of federal efforts has been to create a pervasive atmosphere of EEO consciousness.

The Seattle yards have experienced something like this, but to a lesser degree. This lesser degree of change and commitment flows from an understandable preoccupation with survival as a business enterprise.

The Role of Organized Labor

The shipyards under study have three different kinds of unions. The Peninsula Shipbuilders Association in Newport News is an independent union, one that grew out of one of the original Bethlehem Plans. Alabama Dry Dock is organized by Local 18 of the Industrial Union of Marine Shipbuilders of America. The Pascagoula and Seattle yards bargain with a Metal Trades Council. There are a number of issues concerning unions and EEO interests, but the dominant one is seniority. The conflict between rights earned under a collective bargaining contract and rights won under Title VII cases, Consent Decrees, and settlements negotiated by the Office of Federal Contract Compliance is not unique to shipbuilding, but shipbuilding represents a good laboratory for observation.

There have been a number of responses to a basic situation in the shipyards. The basic situation, common to collective bargaining agreements in other industries, is that seniority is gained in a line of progression (LOP) or a unit, sometimes called a department. To simplify this discussion, call all of these arrangements unit seniority. Unit seniority confers advantages to incumbents against outsiders. These advantages are access to promotion, transfer, protection against layoff, and preference for recall. Where an affected class settlement was made, the settlement rested on unit seniority clauses in collective agreements and past placements based on minority or nonminority status.

The June 12, 1970 agreement at Newport News called for dual seniority as a remedy. Members of the affected class were allowed to retain their seniority in their old line for a certain period while they gained seniority in the new line. This dual seniority is common in collective bargaining agreements, even where minority status is not a factor. However, race was a factor in initial placement in the Newport News yard up to July 1, 1966. Hence, the affected class was defined as those blacks who were placed in certain units prior to that date by reason of their race. These members were then given bidding rights with rate retention to formerly restricted lines. There was no provision for carry-forward seniority.

The agreement reached in Pascagoula provided for carry-forward seniority, which provided that members of the affected class, once they won a rating in the new line, could exercise plantwide seniority. The union, which resisted this originally, settled for a clause that might be looked upon by outsiders as a featherbedding arrangement. The clause specified that no nonmember of the affected class would suffer unemployment or wage reduction as a consequence of rights won by members of the affected class. The company agreed to this, as mentioned above, because the forecast was that total employment would increase by the thousands and the two-year rule would be washed out by growth.

The demand for carry-forward seniority at Alabama Dry Dock produced a lawsuit. When the OCR laid down its package, the union responded by saying it would accept it if the company would give the same kind of guarantee given at Pascagoula. Alabama Dry Dock, with no such assurance of growth, flatly refused. The OCR insisted on carry-forward seniority, Alabama Dry Dock relented, and the union filed a breach of contract suit. The union did not avoid carry-forward seniority, but went the litigation route because they saw a clear threat to jobs. In fact, this has not occurred.

How should the union response be evaluated? The union is duty-bound to defend rights earned over the years, but they are also barred from defending illegal contract provisions. Until the issue was resolved in the courts (see the Crown Zellerbach decision), it was understandable that unions would file breach of contract suits where such vital rights as those won by seniority were threatened. However, it is also true that unions represent minority members. Hence, the issue of going to court often comes to be a political one. The Landrum-Griffin Act requires that local unions have elections every three years. The political issue becomes dominant, and because of that so does the percentage of minorities within the union. The most stringent response was the one made by Local 18 of IUMSWA,but it also was predictable for political reasons. However, the Fifth Circuit had made it clear that seniority systems could be restructured when unit seniority and discriminatory placement policies combined to produce an affected class. Since this was clear, the union possibly went to litigation for internal political reasons.

In the Pascagoula case, the unions were under threat of decertification and made a massive turn around on their racial policies. At the same time they managed to bargain for what the company believed to be, correctly, a face-saving clause that involved no cost to the company. In the Newport News settlement there was no official union objection, a fact that might be related to the extremely high black percentage in the membership and to the efforts of the union since the Blumrosen agreement to smooth over problems involving race. The Seattle situation is quite different.

Alabama, Mississippi, and Virginia are states with right-to-work laws. The state of Washington is not; further, the city of Seattle is a strong union town. The Metal Trades Council in Seattle has bargained for an agreement that gives them the right to fill an opening with a qualified applicant within the first 48 hours of its announcement. Given the situation in the yards, and in the Seattle economy, this has meant that the Metal Trades Council has, in effect, a closed shop agreement. Attorneys may disagree about the nuances of the law on this issue, but labor economists do not. The Metal Trades Council was aware of the EEO demands made on the yards by the subregional office of the Maritime Administration, but it also had the rights of its members to defend. In part because of the weakening economic status of the company and loose Seattle labor market, no attempt was made to construct an affected class settlement out of the Lockheed yard. Recall also that no complaints had been filed on this issue. The current agreement protected members' rights -- rights flowing in part from a past policy of discriminatory placement by the yard. Given the low percentage of minorities in the area and in the Metal Trades Council, it is understandable that the union leadership would not take the initiative on this issue. It is not so clear why the OCR remains in the wings, but their strongest defense is the absence of complaints.

The unions have done the predictable. The settlement at Newport News was no real threat to the union, especially in light of its posture of avoiding racial entanglements. There was no real fight in Pascagoula because growth took care of the issue. The issue has not been raised in Seattle. In the Alabama Dry Dock case the raison d'etre of the union was attacked; and the union proceeded to litigation. There are those who contend that unions are basically political organizations concerned about their survival as institutions. No evidence to contradict this view has been uncovered in this study.

The Contribution of Outreach

The outreach concept was developed for a specific industry: contract construction. However, its success in that industry has led to expansion efforts. These expansion efforts have, on occasion, included shipyards. After all, shipyards do a large amount of construction and often are organized by the same unions that show up in contract construction. We have found specific examples of the application of outreach in two areas: Seattle and Pascagoula.

The Seattle operation, run by the Seattle Opportunities Industries Center (SOIC), has been plagued by incredibly bad labor market conditions. However, the SOIC was able to secure two contracts, each for 60 welders. Graduates of these programs were slotted into the yards in the lowest welder classifications.

Two different kinds of operations function in Pascagoula in conjunction with the Litton yard. The smaller one, the Human Resource Development Institute (HRDI), concentrates on the disadvantaged, primarily ex-convicts. The larger unit is a Recruitment and Training Program (RTP) unit that slots young aspiring shipbuilders into apprenticeship programs for the skilled crafts in the Metal Trades Council and the International Brotherhood of Electircal Workers (IBEW) local, which is not a member of the Metal Trades Council.

The numbers involved in these operations are small when set against the volume of recruitment engaged in by the yards--except for the RTP effort in Pascagoula since 1974. There was no specific involvement by outreach organizations in the personnel efforts of the yards in Mobile, Alabama and Newport News, Virginia.

Little conclusive data was found on outreach operations in shipbuilding; but available information from the RTP-Pascagoula project indicated significant upgrading for its placements, which included many women and comprised more than a majority of blacks. The RTP-Pascagoula experience suggests that there may be a significant role for outreach organizations in shipbuilding.

Women in Shipbuilding

Executive Order 11246 conspicuously omitted any reference to sex. This omission was corrected in Executive Order 11375 issued in 1968. In December 1971, the OFCC released Revised Order 4 requiring that goals and timetables for women be established in AAP. There were token breakthrough changes in Newport News, Seattle, and Mobile. One gathers from field interviews that the attitude everywhere is "Well, if they can do the work, okay." Tokenism seems to be the rule in other industries as well, but one of the yards has made a major change with respect to employing women in blue-collar jobs.

From early 1972 to August 1973, the Litton yard in Pascagoula made a dramatic change in the sex content of its blue-collar work force. In early 1972 Litton employed 232 women in the craft, operative, and laboring jobs. This constituted some 2 percent of the total blue-collar jobs. By August 1973 the number of women employed had moved to 918 and represented nearly 8 percent of all blue-collar jobs in the yard. Further, this was a highly black work force. That is, in August 1973, 580 of the 918 workers were blacks, which comes out to about 63 percent. Interviews with personnel officials at the yard indicated that the women had better attendance records and less turnover than the men. This is simply an indication of the relative absence of economic alternatives for the women. However, the major point to be gained is that the World War II experience can be re-learned with a minimum of disruption. The major event of the next five years in the personnel operation of shipyards will likely be the increasing emphasis on placing women in blue-collar jobs.

Benchmarks and Training

Two important issues which arose in the course of the study are: the use of a minority population figure for an evaluation benchmark for the participation of a minority group, and (2) shipyards as training institutions.

The Equal Opportunity Officers and the Washington staff in the Office of Civil Rights use a benchmark figure based on 1970 Census data. Our first caveat is that this should be related to labor force participation, not population. Our real concern is with the rigidity of this measure. This issue brings to light the twin concerns of the enforcement authorities: underrepresentation and concentration. Students of fair employment are familiar with company profiles which indicate that minorities and women are concentrated in some job titles and underrepresented in others. The problem with the benchmark as a goal is that it carries with it an implicit goal for nonminorities. When applied to a single establishment, this implies a rigidity that flies in the face of reality. To use a statistical term, we make a plea for a confidence interval of so many percent points above and below the benchmark. This flexibility would be no more than a recognition of minority and nonminority preferences and more important it may be necessary to channel larger percentages of minorities and women into the lower jobs in lines of progression in order to give them the training they have so long been denied. Nowhere is this more clear than in shipbuilding.

Large shipyards are massive training institutions. Mostly, but not surprisingly, they train young, inexperienced workers. As was noted in the introduction, shipbuilding performs a socially useful training role, especially for minorities.

Affected Class Settlements: Problems and Prospects

The heart of the successful cases emphasizes affected class settlements. However there is no numerical relationship between the settlement and the successful change in the EEO stances of the yards. This raises some questions. First, the movement of members of an affected class has often been of a small magnitude, the only exception being the growth case in Pascagoula. If the affected class settlements do little in themselves and have no numerical relationship to change, someone will surely ask "Why bother?"

The simpler question to answer is the one dealing with the relatively low movement that follows the successful bargaining for an affected class settlement. The unions, whether they are industrial unions (PSA or IUMSWA) or Metal Trades Councils, have bargained for contracts whose monetary provisions result in wage leveling. That is, there is not much difference in rewards among the various lines of work in the shipyards. Two, the members of the affected class are generally older than the average worker in the yards, many of them in their forties and some older than that. They have an understandable reluctance to learn a new trade, even though they might very well want to have the opportunity specified in writing simply because it was long denied to them. Also, the members of the affected class have not been pondering, lo these many years, how nice it would be to work in another line of progression. Rather, they found ways to make peace with themselves and their peers in their industrial surroundings. These relationships are not given up easily. There are some exceptions, but often these take the form of moving out of extremes of hot and cold weather for the regulated temperatures of a tool shed or an inside maintenance assignment. In short, there is rarely any wholesale movement that follows the posting of a notice announcing the agreement.

The harder question remains: why is it that the successful yards had to take such a dose of medicine? It appears that the exercise is required before the management of the yard makes the "never again" pledge. The settlements cost time, money, and do little to improve anyone's disposition. The resolve at the end is strong. The Civil Rights enforcement bureaucracy needs an imaginative answer that will produce the resolve without the painful medicine. Without that commitment on the part of unions and managements, the initiative will rest with the enforcement authorities. There is really no good explanation for this conclusion, but until there is a corporate and union restructuring of their houses along EEO lines, the people who engineer affected class settlements will be fully employed.

One final observation: If the affected class settlements themselves have produced very little movement and the yards experiencing them have moved into compliance, the reader is entitled to ask who benefited? The answer generally is the younger minorities, many of whom were outsiders or short-tenured workers at the yards at the time the negotiations for an affected class began. Hence, the plight of the older minorities has been the cutting edge that made it possible for younger minorities to move into the better jobs and lines of progression at the yards. The women in the blue-collar jobs, all of whom were outsiders only a few years back, have been beneficiaries of the new EEO stance also.

Chapter 4

SUMMARY AND CONCLUSIONS

The elimination of institutional discrimination through the courts on a case-by-case basis is expensive, time consuming, and uncertain as to outcome. Victory in court does not assure the elimination of discrimination at the workplace. Some elements of institutional discrimination are outside the control of the individual employer or union. Moreover, even for matters amenable to change through the courts, the elimination of discrimination, persistent followup and constant surveillance are needed to bring about the desired economic changes. Sometimes, as in *Ironworkers, Local 86,* effective followup may be prompted through the vigilance of a minority-based organization. In shipbuilding, the Office of Civil Rights, Maritime Administration has institutionalized the followup procedure by developing a set of continuing relationships between Office of Civil Rights regional officials and all parties at the shipyards.

One major difference between cases which are relatively effective in bringing equal opportunity and cases which are not is in the matter of *monitoring*. Few of the court cases examined for this study made provision for adequate monitoring.

One exception is the *Ironworkers, Local 86* case in Seattle; and detailed monitoring procedures were implemented only after demonstrations by an activist black group, the United Construction Workers Association (UCWA), brought the attention of the judge and the public to the ineffectiveness of the order.

The monitoring expense on *Ironworkers, Local 86* in terms of time and money and effort is perhaps greater than for any individual equal opportunity court case in the construction industry. It includes the continued attention of the judge who was still issuing supplemental orders on the case six years after his initial order, a part-time special master, a full-time lawyer assigned by the EEOC to monitor the case and to write detailed quarterly reports on progress made in the apprenticeship program, the time of the members of the Court Ordered Advisory Committee and a full executive staff, funded by the Department of Labor to recruit and support black apprentices, a CETA-funded operating engineers oiler training program, and perhaps most important, the continuing surveillance of the UCWA.

Despite all the aforementioned monitoring resources, progress made toward equal employment opportunity in Seattle has been disappointingly slow and grudgingly conceded by the unions and employers. As Table 9 in Chapter 2 indicates, the goals established in the March 12, 1974 consent decree had not been met almost six and a half years after the initial court order. In fact, counting all senior apprentices "in the pipe" along with graduates, by September 1976, individual unions affected by the suit had attained only 61.5 percent to 86.7 percent of their goal.

Why has the progress been so slow? For one reason, the unions did very little to comply immediately upon the order because they felt themselves certain to win an appeal, which delayed progress an additional 8 months from the initial decision. Beyond this, the unions and employers involved are not anxious to meet the terms of this decision, only to later find themselves vulnerable to suits from non-black minorities or women, or perhaps even a suit requesting stricter population-based goals and timetables for blacks.

Despite the frustration with achieving equal opportunity in Ironworkers, Local 86 and other construction cases, much can be learned from the experience. Among the points to be noted by judges, attorneys and officials of minority-based organizations are the following:

1. When faced with recalcitrant employers and unions whose racial attitudes may have been hardened by the bringing of litigation, monitoring becomes an enormous and expensive task, especially in a labor market as complex as construction.

Perhaps a method may be devised wherein a losing defendant has to bear at least some of the financial burden of the monitoring function, just as the loser pays court costs in many cases. The monitor would continue to be selected by the court, perhaps with input from the plaintiffs. Such a plan may have the additional benefit of providing financial incentives to induce the defendant to remedy the labor force imbalance as soon as possible.

2. Organized minorities play a very important role in enhancing the effectiveness of EEO court decisions in construction. This role includes that of catalyzing action and continuing surveillance as well as recruitment and referral. However, maintaining interest and a viable organization throughout the court proceedings and through the implementation of the order without a secure source of funding is difficult and few minority organizations are up to this task. Further, even if monies were provided to such organizations, they must be in a form which would not impair their activist role in getting court orders enforced.

Contrary to the minorities who were organized by the government to provide input to many construction industry "hometown plans," the minority groups who initiate their own surveillance of court-ordered remedies have a strong interest in and prior knowledge of the construction industry.

3. Officials of minority organizations interviewed for this study acknowledged that they have learned some important points in attempting to integrate construction unions. For example, contrary to their initial impressions, they found no more than a few black craftworkers who were willing and able to join building trades unions as fully qualified journeymen. Secondly, ignoring qualifications and aptitude in recruitment of apprentices was found to lead to unacceptably high dropout rates in the program.

4. A second major cause of minority apprentice dropouts is lack of work opportunities during apprenticeship. This has been evidenced in EEOC followup reports on the Ironworkers Local 86 cases in Seattle. Once a minority apprentice is indentured, efforts need to be made to ensure that he/she obtains adequate job referrals and that there is no discrimination between white and minority apprentices as to quantity or quality of job referrals offered.

5. In cases involving construction labor markets with referral unions, it is generally a mistake to leave employers out of the suit while aiming at the unions exclusively; for this leaves the court with the collective bargaining agreement as its only recourse against employer actions. Some leverage is needed over employers, for example, to stimulate them to keep minority apprentices steadily employed.

6. It is quite useful to establish a forum where minorities, employers and union officials can meet face to face and communicate regarding the problems of integration. Such a forum provides for diffusion of hostility,for education and socialization of all parties, and an opportunity for all parties to have a part in implementing the decree. In this regard, one of the most promising devices is the Court Ordered Advisory Committee (COAC) such as was initialed in the Ironworkers, Local 86 case. Chaired by a neutral, this committee may serve as a model to be followed in other places.

7. Although worthy in intent, establishing a special training program for blacks parallel to the regular apprenticeship program is usually a mistake. Often such programd tend to stigmatize black trainees, and provide only inferior training which serves them poorly upon graduation. This is especially true for programs in which the trainees begin with little or no prior experience or knowledge of the craft. This lesson has been clearly demonstrated by the experience in the Ironworkers Local 86 case in Seattle.

Conclusions on Legal Remedies

The direct impact of federal, state or local civil rights legislation and court decisions on black employment has been limited. In part, the limitations of legal procedure are due to correctable defects such as inadequate funding, a recessionary economy, lack of monitoring followup to litigation, and lack of coordination among government agencies with responsibilities in the area of equal employment opportunity (although some differences among them must be recognized as inevitable because of their different missions, constituencies and powers).

Yet with all foreseeable improvements, however, legal procedures are incomplete tools in the fight for equality in employment for several reasons. For one thing, under our system the evolution of the law and legal principles is a slow process. Experience to date suggests that there is little hope of avoiding a case-by-case approach, especially in seniority cases where different racial histories, technologies and skill requirements make it difficult to generalize.

Legal sanctions, moreover, can do more to strike at overt forms of discrimination than they can to change the patterns that permeate social, political and economic institutions. Hopefully, of course, measures that curtail overt discrimination also will initiate changes in the institutionalized patterns; byt, by generating conflict, legal approaches also cause a hardening of racial positions, therefore stiffening resistance to change. This was best illustrated in the case against Lathers Local 46 in New York City.

Legal approaches also are limited because, in the economist's language, they operate only on the demand side of the problem and do little to change supply. Lowering racial barriers does not ensure supply of qualified people to take advantage of new opportunities. Positive approaches such as outreach programs are required for this. Affirmative action programs, which are tacit recognition of this, can change supplies where they are established by consent decree or by voluntary programs. Under Title VII, employers and unions can be compelled to stop discriminating against blacks, but they apparently cannot be compelled to recruit, hire and train them.

In fact, the threat of the law frequently has more impact than its actual implementation. Courts can achieve much more in a consent decree than they can require of employers in a judicial order. Similarly compliance officers holding out the threat of contract delay or cancellation, or debarment from future contracts have the leverage to insist upon changes in conciliation with government contractors that could not be obtained with compulsion.

While there is considerable apprenhension by the employers and unions about the detrimental effects of the civil rights challenge, government agencies seem, in general, to have strained to preserve traditional business practices. Federal courts, however are apparently in no mood to permit subterfuges that perpetrate discrimination under the guise of legitimate business practices. In Seattle, Cincinnati, New Orleans and other places, courts have ordered unions and employers to adopt measures to cure racial discrimination through reducing union and employer control of apprenticeship, job referrals, and the determination of standards and qualifications.

Present trends strongly suggest that only determined efforts to establish equal employment opportunity within companies and unions will preserve established procedures from modification by courts or government agencies. Experience also has demonstrated that those unions and employers who resist equal opportunity changes the most are the ones who will ultimately have to make the greatest adjustments.

Conclusions on Contract Compliance

The case of shipbuilding illustrates that compliance activity can be effective. But many ingredients have come together to make success possible. One environmental circumstance concurrently enhancing the power of OCR during this period was the evolutionary development of tighter, more complete, and tougher remedies in racial employment cases in the courts. Although the judicial process has inherent weaknesses as a remedy to discrimination, the development of the law in the courts does enhance the bargaining position of compliance agencies who keep abreast of judicial developments and can inject newly-ordered court remedies (such as red-circling, backpay, carry-forward seniority, etc.) into compliance negotiations. In a natural attempt to close all avenues of escape for plaintiffs, courts through supplementary and subsequent orders have placed more detailed and/or severe controls on industry and union personnel processes (albeit often without adequate knowledge of the industry or adequate subsequent followup). Such orders are disruptive and although sometimes ineffective nonetheless constitute a threat which compliance agencies, such as the Office of Civil Rights, Maritime Administration can and have used to advantage. The evolutionary character of the judicial process implies that recalcitrant employers and unions who delay settlements now face exposure to more dire remedies later.

Several other specific environmental factors have also assisted the achievements in shipbuilding. First is an active compliance effort on the part of the Office of Civil Rights (OCR), Maritime Administration, operating with the full support of its agency chief.

Second, the fact that government contracts comprise a large portion of the shipbuilding work provides the OCR with effective leverage through ability to withhold or delay work or debar firms from future work. Third, the structure of the industry is concentrated such that there are a few major employers in limited geographic (coastal) areas thus facilitating administration by a typically short-staffed compliance agency. Fourth, partly because of the undesirable nature of much of shipbuilding work and because of severe fluctuations in the size of its labor force, the industry has traditionally experienced difficulties attracting and maintaining workers as reflected in extremely high turnover rates. Fifth, at least three of the major yards--Newport-News, Ingalls, and Alabama Dry Dock--are located in labor market areas which have been relatively tight over the recent past.

The shipbuilding experience has shown that compliance can work. The success in shipbuilding should not be minimized and it would not have been achieved without an active compliance effort. The industry carries importance beyond its own employment. Because of the high turnover, the industry is a veritable training institution offering preparation for entry into a wide variety of skilled occupations, including several construction trades. Although success in shipbuilding was assisted by a variety of favorable circumstances, notably lacking was persistent action by organized minorities pressing for reform in the industry. Such organized efforts on the part of minorities can play significant roles in other industries, making up for the absence of many of the favorable environmental factors in shipbuilding. We have discovered in our studies of cases in the construction industry that behind every successful court decision increasing minority participation has been a persistent and firm effort on the part of a minority organization.

In conclusion, good work on the part of the Office of Civil Rights, Maritime Administration, has demonstrated that compliance can be effectively used to improve the employment status of blacks. Unfortunately, it is a rare case. If compliance agencies can understand their role as bargaining to reduce discrimination in a multi-actor situation and learn to recognize and act on favorable environmental circumstances, significant progress can be made in remedying employment discrimination. A key is finding leverage to make it clear to employers and unions that it is in their own interest not to discriminate.

Conceptual Framework: A Final Statement

These cases also provide some insight into the basic forces at work causing blacks to have been excluded from jobs and getting included once sufficient pressures for change are developed.

We have argued that discrimination is based on status plus an economic motive, which varies according to principal actor -- i.e., status plus profits for employers and status plus job control for workers.

To change racial practices by unions and employers, litigation must threaten some highly-valued control mechanism or interest or offer some advantage to employers, workers, and their organization.

The main instruments of change have been black workers and their organizations, courts and various government agencies concerned with industrial relations and equal opportunity matters.

These cases indicate that change in minority employment patterns is more likely when the minorities themselves are organized to bring pressure for change, and litigation is accompanied by an outreach effort to recruit, train and place qualified minorities. These cases suggest that legal orders without outreach programs are not likely to be very effective.

The cases also suggest the need to gear remedies to labor market realities. A major reason for the limited success of various "plans" in the construction industry was their failure to attach minority workers to the labor market -- it means very little to get them placed federal jobs.

Remedies also should be alert to the influence of market and union structure. Limited change is likely to occur where pressure for change is brought primarily on local union leaders in the building trades, especially where those leaders have strong market control reasons to resist change. Local leaders are vulnerable politically and often are responsible for only part of the labor market. National agreements are more effective because national union leaders are not as vulnerable politically, usually have better staffs to consider the implications of agreement and are more responsive to pressures for change in unacceptable racial practices.

National agreements therefore would be more effective than the local plans promoted by the Department of Labor.

National plans also would make it possible to get more effective minority participation. A major problem in the local areas was rivalry between local minority organizations. This would be troublesome at the national level, but here there are fewer generally acceptable minority organizations. If participation were restricted to minority organizations with effective outreach capability, the field would be narrowed considerably.

National agreements also would make it possible to develop minimum national qualification standards for various occupations. These standards are necessary in order to resolve disputes over when a worker is a qualified journeyman eligible for union membership. Since apprentice-trained journeymen are less vulnerable to unemployment, learn the trade faster, and are upgraded to supervisory positions faster, a national objecti should be to acquire as many skilled workers as possible through apprenticeship programs. However, since "specialists" are recognized in every craft and whites are admitted without serving apprenticeship, these specialties should be standardized and minorities should be admitted on a nondiscriminatory basis. It is in the interest of the workers involved to make it possible for specialists to be upgraded to full journeyman status.

Of course, unemployment is a major obstacle to improving minority employment in non-construction as well as construction jobs. Unemployment not only makes it difficult to upgrade minority employment patterns, but even makes it difficult for minorities to retain the jobs they acquired during the 1960s. Since blacks often have less seniority they are most vulnerable to lay-offs. There is a strong temptation to argue for "preferential treatment" and the retention of minorities during periods of high unemployment in order to make it possible for minorities to preserve some of the hard-won employment gains of the 1960s. However, preferential treatment not only is unfair to whites but threatens the seniority system which, in the long-run, protects the interests of blacks and whites. Moreover preferential treatment of minorities during lay-offs will intensify white resistance to change, making it more difficult to achieve negotiated programs to make it possible for blacks to continue their economic progress. Clearly, black and white support will be necessary to achieve full employment and racial justice.

With respect to hiring and entry into jobs, we are persuaded that preferential treatment and quotas are unnecessary where outreach programs operate. In other words, it is quite appropriate for government agencies to assign quotas to government-funded agencies to recruit and prepare people to meet minimum qualifications; it would not be advisable or necessary to require that minorities be accepted who did not meet minimum standards. Where overt discrimination does not exist, outreach programs can make quotas and preferential treatment unnecessary.

However, it is quite appropriate for courts and other legal agencies to require preferential treatment to correct patterns of discrimination which have been proved after the judicial requirements of due process are exhausted.

Racial discrimination is based on economic and status considerations. Changing minority employment patterns will, gradually, destroy myths concerning racial superiority and therefore the status reasons for discrimination. Strategies for change must recognize the legitimate economic interests of the parties while eliminating illegitimate practices based on race.

Chapter 1

FOOTNOTES

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Chapter 2

FOOTNOTES

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2. The full legal citations for these cases are respectively as follows: *United States v. Sheet Metal Workers International Association, Local Union No. 36, AFL-CIO*, 280 F. Supp. 719 (E.D. Mo. 1968); on appeal 416 F. 2d 123 (8th Cir. 1969). *Vogler v. McCarty, Inc.*; *United States by Clark v. Local 53 of the International Association of Heat and Frost Insulators and Asbestos Workers*, 294 F. Supp. 368 (E.D. La. 1968); *Local 53 of the International Association of Heat and Frost Insulators and Asbestos Workers v. Vogler*, 407 F. 2d 1047 (5th Cir. 1969). *Dobbins v. Local 212, International Brotherhood of Electrical Workers, AFL-CIO*; *United States v. International Brotherhood of Electrical Workers, Local 212*, 292 F. Supp. 413 (S.D. Ohio W.D. 1968). *United States v. Wood, Wire, and Metal Lathers International Union, Local Union 46*, 328 F. Supp. 429 (S.D. N.Y. 1971); further order 341 F. Supp. 694; on appeal 471 F. 2d 408. *United States v. Local 86, International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers*, 315 F. Supp. 1202 (W.D. Wash. 1970); 443 F. 2nd 544 (9th Cir. 1971).

3. The total membership of IBEW Local 1 is about 5,300. The primary source of nonconstruction employment is the aerospace industry.

4. Other crafts were the carpenters, operating engineers, concrete masons, roofers, plasterers, and lathers.

5. *St. Louis Supplemental Manpower Agreement*, Article IV (Goals).

6. 294 F. Supp. 368, E.D. Louisiana 1968.

7. *Ibid.*

8. M. Liggett, *Employment Patterns in Cincinnati* (Washington, D.C.: Equal Employment Opportunity Commission, 1971), p. 12.

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10. This has subsequently caused some discontent among nonblack Seattle minorities. These other minorities and the construction unions not covered in the Local 86 decision are covered by the Seattle-King County Hometown Plan.

11. 8616 W.D. Washington 1970.

12. For another review of these events see W. Gould, "The Seattle Building Trades Industry: The First Comprehensive Relief Against Employment Discrimination in the Construction Industry," Stanford Law Review, April 1974, pp. 773-813.

13. 2116 S.D. New York 1968.

14. T. Brooks, Black Builders: A Job Program That Works (New York: League for Individual Democracy, 1970), pp. 3-4.

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Chapter 3

FOOTNOTES

1. Lester Rubin, The Negro in the Shipbuilding Industry (Philadelphia: University of Pennsylvania, 1970), p. 5.

2. Ibid.

3. Document in files, Center for the Study of Human Resources, University of Texas at Austin.

4. For a time the New York Regional Office of Civil Rights (OCR) had an employee stationed in Norfolk to monitor the Newport News yard, but that office was closed in 1971.

5. There is another compliance tool available to OFCC type agencies and that is the preaward clearance review. The contractor cannot receive a government contract unless the supervising OFCC agency gives a preaward clearance indicating that the contractor is "in compliance." This clearance is usually given on the basis of having an approved AAP in operation. Hence, the ruling determination with respect to being "contract awardable" is made when an AAP is accepted. The preaward clearance has rarely been used by the Office of Civil Rights in the Maritime Administration.

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7. Rubin, The Negro in the Shipbuilding Industry, op. cit., see chapters II through IV.

8. Herbert R. Northrup, Organized Labor and the Negro (New York: Harper & Brother, 1944), p. 229.

9. Alfred W. Blumrosen, Black Employment and the Law (New Brunswick: Rutgers University Press, 1970), p. 332.

10. Ibid., pp. 328-407.

11. Rubin, The Negro in the Shipbuilding Industry, op. cit.

12. Blumrosen, *op. cit.*, p. 336.

13. Rubin, *The Negro in the Shipbuilding Industry*, *op. cit.*

14. *Ibid*.

15. Supplemental Affirmative Action Program for Equal Employment Opportunity at the Newport News Shipbuilding and Dry Dock Company, June 12, 1970, p. 10.

16. Rubin, *The Negro in the Shipbuilding Industry*, *op. cit*.

17. Interview with an official of the yard, March 30, 1974.

18. Memo filed by an investigator for the Office of Civil Rights, Maritime Administration. Not dated but written post-August 1972.

19. *Ibid*.

20. Compliance Review filed by the Maritime Administration, Office of Civil Rights Staff in New Orleans, April 12, 1973.

21. Interview with officials in Metal Trades Council, Pascagoula, Mississippi, August 1974.

22. Office of Civil Rights staff have charged that Mississippi State Employment Service administers the typing test unfairly, but this is a separate issue, subject to separate legal prosecution.

23. Interview with personnel official in Pascagoula, Mississippi, August 1974.

24. *United States v. Local 86 International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers*, 315 F Supp. 1202 (W.D. Wash. 1970); 443 F. 2nd 544 (9th Cir. 1971).

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GLOSSARY OF TERMS*

affected class	-	A group of people with a common characteristic (race, sex, religion, national origin) who have been denied equal opportunity in violation of Title VII of the Civil Rights Act of 1964. This denial may occur at any step in the employment process: recruitment, placement, promotion, compensation, shift assignment, or working conditions.
affirmative action plan	-	A document required of covered government contractors, under regulations of the OFCCP. The employer is obliged to compare the participation of minorities and females in his/her with their evidence in the labor market from which workers are drawn to determine whether or not the employer is at parity with the labor market. The affirmative action plan is a statement of goals, timetables and programs indicating how the employer plans to move from his/her present status to parity.
carry-forward seniority	-	Provision enabling a worker who transfers from one seniority unit to another to come in with full credit for seniority earned in the previous unit.
compliance agencies	-	Organizations established under the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor or internal subunits of government agencies to which OFCCP has delegated responsibilities. They are charged with the administration of Executive Order 11246 as amended, Revised Orders No. 4 and No. 14, and with the analysis and approval of affirmative action plans. Their powers of enforcement include the ability to deny government business to contractors found in violation.

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*These definitions are offered for the lay person and are not to be considered legally definitive.

conciliation agreement - An agreement reached with the assistance of a third party, who is generally a staff member of the Equal Employment Opportunity Commission or other agency established to promote equal opportunity. In the conciliation process, the third party acts as intermediary in bringing the parties together without actually deciding or determining the settlement.

consent degree - A procedure used by the courts to settle a disputed case by having the company or union enter an agreement or understanding on the basis of which litigation will be ended in return for taking some sort of action. Once the litigants consent to the entry of a decree and the court has reviewed it, there is no further appeal open to the parties.

line of progression - A grouping of jobs which are related through ladders of promotion. Within a line of progression, workers are upgraded from one job to another on the basis of seniority or some combination of seniority and ability.

red-circling - A provision whereby a person who transfers from one seniority unit to another retains his/her former rate of pay regardless of relative seniority status or the pay level for the job held in the new unit. However, the transferred worker receives no pay raises until the pay rate in the new unit catches up to the pay level received under the former job.

Red-circling had formerly been used in industrial relations to protect former workers from downgrading in job reclassification programs.

GLOSSARY OF ACRONYMS

AAP - Affirmative Action Plan

ADDSCO - Alabama Dry Dock and Shipbuilding Company

AFL-CIO - American Federation of Labor and Congress of Industrial Organizations

BAT - Bureau of Apprenticeship and Training, U.S. Department of Labor

CETA - Comprehensive Employment and Training Act of 1973

COAC - Court-Ordered Advisory Committee (established in the *Ironworkers Local 86* case in Seattle)

CRO - Civil Rights Officer

DOL - U.S. Department of Labor

DOD - U.S. Department of Defense

EEO - Equal Employment Opportunity

EEOC - U.S. Equal Employment Opportunity Commission

EO - Executive Order

EOS - Equal Opportunity Specialist, formerly Civil Rights Specialist (CRS)

FEPC - Fair Employment Practices Commission

HRDI - Human Resources Development Institute

IBEW - International Brotherhood of Electrical Workers

IUMSWA - Industrial Union of Marine and Shipbuilding Workers of America

JAC - (Labor-Management) Joint Apprenticeship Committee

JET - Journeyman Employment Training Program (Cincinnati)

LEAP - Urban League Labor Education Advancement Program

LOP - Line of Progression

MDTA - Manpower Development and Training Act of 1962

MSES - Mississippi State Employment Service

NAACP - National Association for the Advancement of Colored People

PCEEO - President's Committee on Equal Employment Opportunity

PREP - Preparation Recruitment Employment Program (Cincinnati)

PREP-JET - The Cincinnati Hometown Plan which merged the Preparation Recruitment Employment Program and the Journeyman Training Program

OFCCP - Office of Federal Contract Compliance Programs, U.S. Department of Labor (formerly entitled the Office of Federal Contract Compliance or OFCC)

OCR - Office of Civil Rights, Maritime Administration

PSA - Peninsula Shipbuilders Association (the union in the Newport News Shipbuilding Yard)

RTP - Recruitment and Training Program

SIC - Standard Industrial Classification

SMSA - Standard Metropolitan Statistical Area

SMW - Sheet Metal Workers International Association

SOIC - Seattle Opportunities Industrialization Council

SSA - Spanish Surnamed American

UCWA - United Construction Workers Association (Seattle, Washington)